

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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JUL 13 4 13 PM '99

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W.Va. Constitution, Article XII, §2, W.Va. Code § 18-20, et seq. and the  
Individuals with Disabilities Education Act (IDEA), as amended, Public Law 105-17

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §§29A-3B-1, et seq.; W.Va. Board of Education  
v. Hechler, 180 W.Va. 451; 376 S.E.2d 839 (1988).

AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

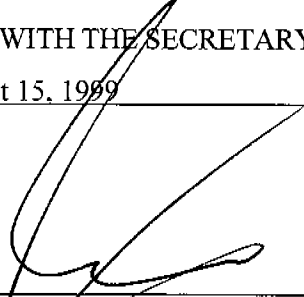
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Regulations for the Education of Exceptional  
Students (2419)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS August 15, 1999

  
\_\_\_\_\_  
William J. Luff, Jr.  
Associate State Superintendent

\$16.10 w/out comments  
\$45.30 w/comments

**EXECUTIVE SUMMARY  
WEST VIRGINIA BOARD OF EDUCATION**

**POLICY NUMBER AND TITLE:** Policy 2419  
Regulations for the Education of Exceptional Students

**PUBLIC COMMENT PERIOD ENDS:** June 25, 1999

**BACKGROUND:**

Policy 2419 is based upon the federal and State laws that are applicable to the education of students with exceptionalities and, therefore, must be revised periodically to reflect changes in legislation at either level. The most recent reauthorization of the federal special education legislation resulted in the Individuals with Disabilities Education Act Amendments of 1997 (IDEA 97). The federal regulations for IDEA 97 were issued by the U.S. Department of Education in March of 1999.

**PURPOSE:**

The proposed revisions to Policy 2419 reflect the changes in the federal legislation and regulations. The proposed revisions incorporate new and revised requirements in IDEA 97 and maintain the federal language whenever possible. The proposed revisions in Policy 2419 will provide current and accurate guidance to schools and districts in the implementation of the provisions of IDEA 97.

**PROPOSED CHANGES:**

The proposed revisions provide general policy requirements emphasizing improved student results, improved instructional services, greater opportunities for students with exceptionalities to access and make progress in the general education curriculum, and increased parent and student involvement in the educational process.

Major proposed changes include additional requirements from IDEA 97 in the following areas: 1) private school placements by parents; 2) mediation; and 3) complaint procedures. Another area of major revision is the proposed changes in determining the caseload for special education instructional personnel.

Specifically, in the area of private school placements, the proposed revisions outline the process to be used by districts to determine the type and extent of special education and related services to be provided to students with exceptionalities who have been placed in private schools, including religiously-affiliated schools, by their parents. Since students with exceptionalities who have been placed in private schools by their parents no longer have an individual entitlement to the rights and services guaranteed under IDEA 97, these proposed revisions will provide more direction to district personnel and parents regarding the district's responsibilities for these students.

The proposed revisions also include the additional federal regulations for the establishment of a mediation process designed as a method of resolving disagreements between parents and districts before one or both parties seek more legal remedies to their disputes. In addition, the State's special education complaint procedures are included in the proposed revisions to Policy 2419. Although the Department has had a complaint system and procedures in effect for many years, the inclusion of these procedures in Policy 2419 will make them more accessible to parents and educators across the State.

The fourth major change is a proposed method of determining caseloads based upon the number of students being served, the amount of direct and/or indirect instruction needed by each student, the supplemental aides/services needed by the

students and the other duties assigned to the special education instructional personnel. This proposed method of determining caseloads will:

- a) provide districts and schools with more flexibility in scheduling and staffing to genuinely meet the needs of students;
- b) reflect the extent of a student's needs regardless of the setting(s) in which the specially designed instruction is delivered; and
- c) increase the opportunities for more students with disabilities to be served in regular education classrooms with **adequate supports**.

Generally, the following areas were revised to focus the special education process and services on increasing the student's access to the general curriculum and improving the student's performance and positive student results in relationship to the general education curriculum:

1. evaluation and reevaluation requirements providing school personnel more flexibility in determining what individual evaluations must be conducted, and emphasizing the importance of classroom performance data and participation in large-scale state and district assessments;
2. eligibility for disability categorical areas to reflect current research and practice;
3. eligibility for gifted to address under- representation of specific populations;
4. IEP Team membership, which strengthens the need for regular educators' participation and student involvement in the IEP process;
5. IEP content requirements and special considerations in the development of an IEP to ensure that all of a student's unique needs are addressed and that the IEP is designed to increase the student's participation in the regular educational environment and develop the skills needed for post-secondary success;
6. pre-school requirements and placement options to enhance the smooth transition of children with disabilities from early intervention programs into the public school programs for pre-school children ages 3-5;
7. discipline requirements that describe the process for the removal of students with disabilities from school and the district's responsibilities in implementing the process;
8. procedural safeguards language that has been clarified or expanded to ensure that students and their families understand and are afforded the rights guaranteed them under the law.

#### **IMPACT:**

The proposed revisions in Policy 2419 will incorporate all current federal requirements into State policy and maintain, whenever possible, the language of the federal legislation. Revised Policy 2419 will, then, provide guidance and direction to the local school districts in the implementation of IDEA 97. When revised Policy 2419 is in effect, local school districts will be required to revise their local special education policies and procedures to reflect the current changes.

Changes in State and local policies and procedures will require extensive staff development statewide for educators, students and their families, and other agency people in the new or revised requirements. The needed staff development will be provided by Department personnel, RESA coordinators, district school personnel and Parent/Educator Resource Center staff members.

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**TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION**

**SERIES 16  
REGULATIONS FOR THE EDUCATION OF  
EXCEPTIONAL STUDENTS (2419)**

**§126-16-1. General.**

1.1. Scope. These regulations apply to preschool, early childhood, middle childhood, adolescent and adult students whose educational programs require special education and related services. These apply to three year olds, as of their third birth date, through five year olds with disabilities and those who are between five and 21 years of age prior to September 1 of such school year, unless the student has met graduation requirements as specified by the Individualized Education Program and within the state/local policy pertaining to graduation requirements.

1.1.1. West Virginia's mandatory special education statute legislates a child identification effort by county boards of education. Chapter 18, Article 20, Section 2, of the West Virginia Code states, "The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment and such special services as may be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type..." The mandated target group for the state child find requirements includes individuals with disabilities between birth and 21 years of age, gifted students from first through eighth grades, and exceptional gifted in grades nine through 12. Part C of the Individuals with Disabilities Education Act (IDEA) requires interagency collaboration in child find activities targeting children from birth through 5 years of age.

1.1.2. The intent of the federal and state legislative child find mandates is to require an aggressive search by the state and local education agencies for:

a. individuals with disabilities ages birth to 21, gifted individuals from first through eighth grades, and exceptional gifted in grades nine through 12, who are out of school and not receiving preschool, early childhood, middle childhood, adolescent, or adult educational programs; and

b. children with disabilities who are enrolled in preschool, early childhood, middle childhood, adolescent, and adult educational programs, gifted students who are in

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grades one through eight, and exceptional gifted students in grades nine through 12, but who are receiving programs and services inappropriate to meet their needs.

1.2. Authority. W. Va. Const., Article XII, §2, W. Va. Code §18-20 et seq., and the Individuals with Disabilities Act (IDEA), as amended, Public Law 105-17.

1.3. Filing Date. July 16, 1999

1.4. Effective Date. August 15, 1999

1.5. Right to a Free Appropriate Public Education. Special education and related services shall be made available to all individuals with disabilities who are between three and 21 years of age, all gifted students in grades one through eight, and all exceptional gifted students in grades nine through 12. West Virginia Code, Chapter 18, Article 20, the state's mandatory special education statute and the Individuals with Disabilities Education Act are reaffirmations that education is a right extended to all exceptional individuals and not a privilege. The intent of the mandates is to assure that all of the aforementioned individuals with exceptionalities, including students with disabilities who have been suspended or expelled from school, have available a free appropriate public education which includes special education and related services to meet their unique educational needs. This applies to all public agencies that provide special education and related services to exceptional students.

1.6. Exception to a Free Appropriate Public Education. The obligation to make a free, appropriate public education available to all students with disabilities does not apply to students age 18 to 21 who, prior to their incarceration in an adult correctional facility, were not identified as an eligible student with a disability and students who have graduated from high school with a regular diploma.

1.7. Purpose and Intent of the IEP. Individualized Education Program (IEP) requirements describe two components: a process and a document. This policy emphasizes that the process is fundamental and that the document must reflect the full and complementary involvement of parents and educators. The overall IEP requirement, as described in the Individuals with Disabilities Education Act, has the following purposes and functions:

1.7.1. The IEP meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to jointly decide the student's educational needs, what services will be provided to meet those needs, and what the anticipated outcomes may be.

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1.7.2. The IEP process provides an opportunity for resolving any differences between the parents and the public agency concerning the special education needs of an exceptional student; first, through the IEP meeting; and second, through the procedural protections that are available to the student and the student's parents.

1.7.3. The IEP sets forth in writing a commitment of resources necessary to enable an exceptional student to receive needed special education and related services.

1.7.4. The IEP is a management tool that is used to ensure that each exceptional student is provided special education and related services appropriate to the student's special learning needs.

1.7.5. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether an exceptional student is actually receiving the free appropriate public education agreed to by the parents and the school.

1.7.6. The IEP serves as an evaluation device for use in determining the extent of the student's progress toward meeting the projected outcomes.

### **§126-16-2. Identification/Referral.**

2.1. Policy Statement: Each public agency shall conduct child find activities to ensure that all students with disabilities, ages 0-21, gifted students from first through eighth grades and exceptional gifted in grades nine-12, are identified and referred for appropriate evaluation. Specific methods for conducting these activities, including procedures for the referral of students suspected of having an exceptionality even though they are advancing from grade to grade, students in private/religious schools, highly mobile students, or for referral by any interested person or agency, shall be stated in each public agency's policies and procedures.

#### 2.1.1. Public Awareness.

a. Each public agency shall conduct an on-going awareness campaign that informs the public of the nature of exceptional students, the availability of special education and related services, and the persons to contact for initiating a referral.

#### 2.1.2. Referrals.

a. Each public agency shall establish a child identification system which includes referrals from at least the following sources:

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- A. the screening process;
- B. school teams;
- C. private/religious schools; and
- D. any interested person or agency.

### 2.1.3. School Teams.

a. Each public agency shall establish a team in each school to assist in the identification/referral of students whose educational performance is not commensurate with non-exceptional peers.

b. Each public agency shall define the membership of the team and its relationship to the special education process.

### **§126-16-3. Evaluation and Reevaluation.**

3.1. Policy Statement: Each public agency shall conduct an initial multidisciplinary evaluation of a referred student and conduct reevaluations of the student to determine the student's educational needs. Specific methods for providing those activities shall be stated in each public agency's policies and procedures.

#### 3.1.1. General Responsibilities.

a. Each public agency shall conduct a full and individual multidisciplinary evaluation of the student's educational needs in accordance with Section 8.1.8 of this policy before any action is taken with respect to the initial placement of an exceptional student in a program providing special education and related services.

b. Each public agency shall conduct an appropriate, individual multidisciplinary reevaluation to determine the educational needs of each eligible student every three (3) years, or more frequently if conditions warrant, or if the student's parent or teacher requests an evaluation.

c. Each public agency shall complete the initial multidisciplinary evaluation and convene an Eligibility Committee and determine eligibility, as specified in Section 126-16-4 of this policy, within 80 days of receipt of the written parental consent for evaluation.

#### 3.1.2. Multidisciplinary Evaluation Team.

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a. An evaluation shall be conducted by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected exceptionality.

b. The multidisciplinary evaluation team (MDET) shall also consist of:

A. the student's regular education teacher; or

B. if the student does not have a regular education teacher, a regular education teacher qualified to teach a student of her or his age; or

C. for a child of less than school age enrolled in an early intervention or other preschool special needs program, an individual qualified to teach a child of her or his age;

D. at least one person qualified to conduct individual diagnostic examinations of students, such as a certified school psychologist, speech-language pathologist or audiologist; and

E. for a student suspected of being sensory impaired (deaf, hard-of-hearing, blind, partially-sighted, or deaf-blind), physically disabled (orthopedically impaired, other health impaired, traumatic brain injured), or of having a voice disorder to verify the existence of a structural or functional pathology, a licensed physician.

c. Members of the MDET shall:

A. be appropriately certified, licensed or otherwise qualified to administer the evaluations for which they are responsible;

B. trained in the use of the specific assessment instruments or techniques for which they are responsible;

C. knowledgeable in the area of concern; and

D. knowledgeable in the applicable state and federal regulations.

### 3.1.3. Evaluation Components.

a. For an initial evaluation, the student shall be evaluated in all areas related to the suspected exceptionality including, if appropriate, health, vision, hearing, social and

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emotional status, adaptive skills, behavioral performance, general intelligence, academic performance, communicative status, motor abilities, assistive technology services and/or devices, post-secondary interests/preferences and vocational aptitudes.

b. When evaluating a student with an exceptionality, the evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected or identified exceptionality.

c. For reevaluations and initial evaluations, if appropriate, a team which meets the membership requirements of Section 5.1.2.a:

A. shall review existing evaluation data on the student, including:

(a) evaluations and information provided by the parents of the student;

(b) current classroom-based assessments and observations; and

(c) observations by teachers and related service providers; and

B. shall, on the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(a) whether the student has an exceptionality or continues to have a disability;

(b) the present levels of educational performance and educational needs of the student;

(c) whether the exceptional student needs or the student with a disability continues to need special education and related services; and

(d) for reevaluations, whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate as appropriate in the general curriculum;

C. may conduct its review without a meeting;

D. shall administer tests and other evaluation materials as may be needed to produce the data identified as needed; and

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E. shall use reevaluation information for gifted students for programmatic purposes and not eligibility.

d. If the determination under paragraph (e) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents:

A. of that determination and the reason for it; and

B. of the right of the parents to request an evaluation to determine whether, for purposes of services under this part, the child continues to be a child with a disability.

e. The student's academic, behavioral, motoric and/or communicative performance shall be observed by at least one MDET, other than the student's regular classroom teacher, in the regular classroom and, when appropriate, in at least one other setting.

A. In the case of a child of less than school age or out of school, a MDET team member shall observe the child in an environment appropriate for a child of that age.

B. When the student is suspected of having only speech/language impairments or being gifted, the team members shall determine if observations are to be conducted.

f. When verbal communication is not an effective means of communication for the student, the student shall be evaluated to determine the need for an alternative means of communication.

g. Reevaluations of a sensory impaired student shall be conducted more frequently if specified on the certified audiologist's or physician's report.

h. A reevaluation of a gifted student shall also be conducted to determine eligibility for exceptional gifted during the eighth grade consisting of, at least, an appropriate individual achievement measure and an educational performance review.

i. The public agency shall document information from the parent concerning the student, such as developmental history and behavior in the home and community, and make the written information available to the Eligibility Committee.

j. For students with disabilities age 14 (or younger, if appropriate), the public agency shall obtain information pertaining to the student's post-secondary interests and

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preferences.

k. Each evaluator, including the classroom teacher, shall write, sign and date an individual evaluation report and make the written report available to the Eligibility Committee.

### **§126-16-4. Eligibility.**

4.1. Policy Statement: Each public agency shall establish and convene an Eligibility Committee to determine whether: 1 ) the referred student meets the eligibility criteria in one of the designated exceptionalities; and 2) by reason thereof, needs special education and related services. Specific methods for conducting these activities shall be stated in each public agency's policies and procedures.

#### 4.1.1. Eligibility Meetings.

a. The public agency shall establish an Eligibility Committee (EC) of qualified professionals and the parent.

#### 4.1.2. Procedures for Determining Eligibility.

a. The EC shall carefully consider documented information from a variety of sources, such as ability and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive skills.

b. The EC shall:

A. utilize the results of the multidisciplinary evaluation as the primary source of information to determine the student's educational needs and if:

(a) the student meets the eligibility criteria in one of the designated exceptionalities; and

(b) needs specially designed instruction; or

(c) the student no longer meets the eligibility criteria or no longer needs specially designed instruction.

B. ensure that the determinant factor for a student's eligibility is not:

(a) lack of instruction in reading or math; or

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(b) limited English proficiency.

C. When a student is suspected of being learning disabled, the committee must also complete a team report that includes:

- (a) whether a student has a specific learning disability;
- (b) the basis for making the determination;
- (c) the relevant behavior noted during the classroom observation of the student;
- (d) the relationship of that behavior to the student's academic functioning;
- (e) the educationally relevant medical findings, if any;
- (f) whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services;
- (g) determination concerning the effects of environmental or cultural difference or economic disadvantage;
- (h) written certification by each committee member as to whether the report reflects her or his conclusions. If the report does not reflect her or his conclusions, the committee member must submit a separate statement presenting those conclusions.

D. compile and submit determination results for eligible students to the IEP team;

E. document the specific exceptionality for state and federal reporting purposes;

F. recommend options for those students deemed ineligible and refer the student to the school team; and

G. provide parents copies of the evaluation reports and documentation of eligibility determination.

### 4.1.3. Definitions and Eligibility Criteria.

a. Autism

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A. Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is affected primarily because the student has a behavior disorder, as defined in these regulations. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in (B) of this section are satisfied.

B. Documentation will assure that the student meets a total of six (or more) items from (a), (b), and (c), with at least two from (a), and one each from (b) and (c):

(a) qualitative impairment in social interaction, as manifested by at least two of the following:

(A) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;

(B) failure to develop peer relationships appropriate to developmental level;

(C) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest);

(D) lack of social or emotional reciprocity.

(b) qualitative impairments in communication as manifested by at least one of the following:

(A) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime);

(B) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;

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(C) stereotyped and repetitive use of language or idiosyncratic language;

(D) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

(c) restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

(A) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;

(B) apparently inflexible adherence to specific, nonfunctional routines or rituals;

(C) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements);

(D) persistent preoccupation with parts of objects.

### b. Behavior Disorders

A. A behavior disorder is a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance:

(a) an inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) inappropriate types of behavior or feelings under normal circumstances;

(d) a general pervasive mood of unhappiness or depression;

(e) a tendency to develop physical symptoms or fears associated with personal or school problems; or

(f) a schizophrenic condition.

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B. The term does not apply to students who are socially maladjusted, unless it is determined that they meet the above definition.

C. Documentation will assure that a student meets all of the following criteria:

(a) continues to exhibit a behavior disorder consistent with the definition after interventions have been implemented;

(b) exhibits the characteristic(s) over an extended period of time and to a marked degree; and

(c) exhibits behavior(s) that is not primarily the result of physical, sensory, or intellectual deficits.

### c. Blind and Partially Sighted

A. Blindness or partial sight is an impairment in vision that even with correction adversely affects the student's educational performance.

B. Documentation will assure that the student meets one or more of the following:

(a) Visual acuity - A measure of 20/70 or less in the better eye with best correction recorded in either far point or near point;

(b) Visual field limitation - Angle of vision is 20 degrees or less in the better eye;

(c) Progressive eye disease - A deteriorating eye condition which will result in loss of visual efficiency (e. g., glaucoma, retinitis pigmentosa or macular degeneration) as verified by a licensed optometrist or ophthalmologist;

(d) Cortical visual impairment - A visual loss caused by a disturbance of the posterior visual pathway and/or cortex.

### d. Deaf-Blindness

A. Deaf-blindness is concomitant hearing and visual impairments the combination of which causes such severe communication and other developmental and educational needs that these impairments cannot be accommodated by special education

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services solely for the deaf or hard of hearing, or for the blind or partially sighted student.

B. Documentation will assure that a student meets all of the following:

- (a) the eligibility criteria for deaf and hard of hearing; and
- (b) the eligibility criteria for blind and partially sighted.

### e. Deaf and Hard of Hearing

A. Deafness and other hearing impairments are auditory acuity deficits that delay or inhibit the development of speech and/or language skills and adversely affect developmental and educational performance.

(a) A hearing impairment is a deficit in hearing, whether permanent or fluctuating, that adversely affects the student's educational performance but that is not included under the deafness in this section.

(b) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, to the extent that specially designed instruction is required.

B. Documentation of one or all of the following:

- (a) a hearing loss; and/or
- (b) auditory pathology impairments resulting in one of the impairments defined above.

### f. Gifted

A. Giftedness is exceptional intellectual abilities that are evidence of outstanding capability and require specially designed instruction and/or services beyond those normally provided by the regular school program.

B. For gifted students, grades one (1) through eight (8), documentation that a student meets both of the following:

- (a) Intellectual Ability

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(A) General intellectual ability, a full scale score of 2.0 or more standard deviations above the mean on a comprehensive test of intellectual ability, with consideration of 1.0 standard error of measurement at the 68% confidence interval, and

(b) Achievement/Performance

(A) At least one area of academic achievement as measured by an individual standardized achievement test, indicating that the student requires specially designed instruction in one or more of the four (4) core curriculum areas; or

(B) At least one area of classroom performance, as determined during the multidisciplinary evaluation, indicating that the student requires specially designed instruction in one or more of the four (4) core curriculum areas.

C. For exceptional gifted, grades 9 through 12, documentation that a student meets the eligibility criteria for gifted and one or more of the following:

(a) the eligibility criteria for one or more of the disabilities as defined in this section; and/or

(b) the definition for economically disadvantaged as defined in the public agency's policies and procedures; and/or

(c) is underachieving which takes into consideration the student's ability level, educational performance and achievement levels; and/or

(d) is psychological adjustment disordered as documented by a comprehensive psychological evaluation.

D. Special Considerations:

(a) When a student is being considered for eligibility based upon an ability score that falls within the minus range of a 1.0 standard error of measurement, at 2.0 standard deviations above the mean, the EC shall document that the student has the potential to achieve or perform at a level expected of a student scoring 2.0 standard deviations above the mean.

(b) If determined that the eligibility criteria and/or assessment instruments discriminate against a student because the student belongs to an historically under-represented gifted population, eligibility for gifted services shall be based upon criteria that complement the definition and eligibility for gifted as described in this policy.

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(c) Before the end of the eighth grade year, the EC shall review the evaluation data for each identified gifted student to determine continued eligibility as an exceptional gifted student in grades 9 - 12. The records for each eighth grade student are then referred to the IEP team.

(d) If the student is eligible as exceptional gifted, the IEP team shall develop an IEP. If the student is not eligible as exceptional gifted, the IEP team shall write a four year plan that addresses the student's need for specially designed instruction, including honors/advanced education, when appropriate. The implementation and annual review of this plan is required by the public agency.

### g. Mentally Impaired

A. Mental impairments are substantial limitations in present functioning characterized by significantly subaverage intellectual functioning existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental impairments manifest before age 18.

#### B. Documentation that the student meets all of the following:

(a) general intellectual functioning level is approximately 70 to 75 or below on scales with a mean of 100 and standard deviation of 15;

(b) related limitations in two or more adaptive skill areas substantially below the average level of functioning; and

(c) age of onset is 18 or below.

### h. Orthopedically Impaired

A. Orthopedic impairments are severe physical conditions which adversely affect the student's educational performance. The term includes: disabilities caused by congenital anomaly (e.g., spina bifida, congenital amputation, and osteogenesis imperfecta), disabilities caused by disease (e.g., osteomyelitis, poliomyelitis, arthritis), and disabilities from other causes (e.g., amputation, cerebral palsy, dystrophies and atrophies, and conditions which cause contracture).

#### B. Documentation of both of the following:

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(a) a physical disability as diagnosed and described by a licensed physician; and

(b) the existence of educational needs as a result of the physical disability or health condition.

### i. Other Health Impaired

A. Other health impairments are disabilities of limited strength, vitality, or alertness that adversely affect the student's educational performance including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, and that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, cancer, diabetes, epilepsy, heart condition, hemophilia, lead poisoning, nephritis, rheumatic fever or sickle cell anemia.

### B. Documentation of both of the following:

(a) a chronic or acute medical or health condition as diagnosed and described by a licensed physician; and

(b) the existence of educational needs as a result of the medical or health condition.

### j. Preschool Special Needs

A. Preschool special needs are developmental delays in two (2) or more of the following areas: cognition, fine motor, gross motor, communication, social/emotional/affective development, self-help that are manifested in children ages 3-5.

### B. Documentation of the following:

(a) is functioning at, or lower than, 75% of the normal rate of development in two (2) or more of the following areas: cognition, fine motor, gross motor, communication, social/emotional/affective development and/or self-help skills.

### C. Special Considerations:

(a) Special education and related services for the eligible preschool child shall be provided as of the child's third birthday;

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(b) For a child transitioning from a Part C early intervention program, an interagency transition plan must be developed to assure that when a child turns three (3) years of age either an IEP or Individual Family Service Plan (IFSP) which meets the requirements of Section 5.1.3 and 5.1.4 of these regulations has been developed and implemented by the public agency;

(c) For a child who turns three (3) in the spring/summer, the LEA is responsible for implementation of the IEP services for children as of the third birthday, regardless of which agency provides the services;

(d) If appropriate, a child who turns three (3) years old in the fall may begin Part B services under the local educational agency at the beginning of the school year preceding the third birthday.

### k. Specific Learning Disabilities

A. Specific learning disabilities are a heterogeneous group of disorders manifested by significant deficits in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. Specific learning disabilities are intrinsic to the individual and may be present across the life span. Although specific learning disabilities may occur with other disabilities (for example, sensory impairments or behavior disorders), or with extrinsic influences (such as cultural differences, insufficient or inappropriate instruction), specific learning disabilities are not the result of these disabilities or influences. Deficits in attention, self-regulatory behaviors, social perception, and social interaction may also exist but do not by themselves constitute a specific learning disability.

#### B. Documentation of all of the following:

(a) General intellectual functioning at or above one standard deviation below the mean, in consideration of 1.0 standard error of measurement; and

(b) A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, or mathematics reasoning.

(A) The discrepancy shall be determined by a comparison of age-based standard scores of ability and achievement. A regression formula shall be used to determine the severity of the discrepancy. A severe discrepancy is defined as a minimum of 1.75 standard deviations difference, taking regression and 1.0 standard error of measurement into account.

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(B) A method utilizing the standard error of the difference scores shall be used only if the technical data (i. e., test correlations) necessary to account for the effects of regression are not available.

(C) A severe discrepancy between ability and achievement that is NOT primarily the result of:

1. a sensory or motor disability;
2. a mental impairment;
3. a behavior disorder;
4. environmental or cultural differences or economic disadvantage as determined by comparing the student to other students in a similar situation (e. g., the same geographical area, similar socio-economic status, etc.); or
5. insufficient or inappropriate instruction.

### C. Special Considerations:

(a) The EC, on the basis of all evaluation data, may determine that a student is eligible for special education services when a valid determination of general intellectual functioning and/or a severe discrepancy cannot be obtained due to special considerations. The specific information regarding the criterion in question which supports the decision shall also be documented on the Specific Learning Disabilities Team Report.

#### I. Speech/Language Impairments

A. A speech/language impairment is a communication disorder such as stuttering (fluency), a language impairment, impaired articulation, or voice impairment that adversely affects a student's educational performance.

B. Documentation will assure that a student exhibits one or more of the following communication disorders:

(a) Language - A student with a language impairment exhibits;

(A) language abilities significantly below expected language performance for the students' chronological age, cognitive stage of development, gender or cultural/social background; and

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(B) a language quotient (LQ) of 77 or less and/or at least 1.5 standard deviations (SD) below the mean, or a significant discrepancy between language and nonverbal reasoning; or

(C) a severe deficit in receptive, expressive or pragmatic language which prevents appropriate communication in school and/or social situations as measured by formal and/or informal diagnostic procedures.

(b) Articulation - A student exhibits an articulation impairment when:

(A) intelligibility due to speech sound errors is below the expected performance levels for the student's chronological age, cognitive stage of development, gender, or cultural/social background; and

(B) application of developmental norms and severity ratings from diagnostic tests verify speech sounds that may not develop without intervention.

(c) Fluency - A student exhibits a fluency impairment when:

(A) interruptions or dysfluencies in one or more speaking situations are inconsistent with normal patterns of fluency; and

(B) interpretation of evaluation data verifies the existence of a fluency impairment.

(d) Voice - A student exhibits a voice impairment when:

(A) impairment(s) in pitch, loudness or quality exist; and

(B) the existence or absence of a structural or functional pathology is verified by an otolaryngologist.

C. Special Considerations:

(a) Lack of discrepancy between cognitive level (i. e., mental age) and communication performance (i. e., language age) shall not be the sole factor to determine a severely speech and language disordered student's eligibility for services. Other factors which must be considered are informal evaluation results, physical ability, educational and therapy history.

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(b) A student's eligibility for speech and language services cannot be determined on the basis of having a primary language other than English or a language difference. Appropriate evaluation must verify the presence of an impairment in the primary and/or all languages spoken.

### m. Traumatic Brain Injury

A. Traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory/perceptual/motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

### B. Documentation of all of the following criteria:

(a) an injury to the brain caused by a physical force or internal occurrence has been diagnosed by a licensed physician or neuropsychologist; and

(b) the existence of cognitive, language, behavior, executive skills and/or motor problems as a result of the injury.

## **§126-16-5. Individualized Education Program Process.**

5.1 Policy Statement: Each public agency shall initiate and conduct meetings for the purpose of developing, reviewing and, if appropriate, revising the Individualized Education Program (IEP) for an exceptional student at least once a year. Specific methods for conducting these activities shall be stated in each public agency's policies and procedures.

### 5.1.1. Individualized Education Program Team Timelines.

a. The Individualized Education Program (IEP) team shall be convened to develop a written IEP within thirty (30) calendar days of the determination of eligibility and prior to the initiation of services.

b. The IEP team shall be convened periodically, but not less than annually, to review and, if appropriate, revise the IEP for an exceptional student.

### 5.1.2. Individualized Education Program Team Membership.

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a. General - The public agency shall establish an IEP team which shall include the following participants:

A. a representative of the public agency, who:

(a) is qualified to provide, or supervise, the provision of specially designed instruction to meet the unique needs of the exceptional student;

(b) is knowledgeable about the general curriculum; and

(c) is knowledgeable about the availability of resources of the public agency.

B. at least one regular education teacher of the student, including the referring and the receiving regular education teachers (if the student is, or may be, participating in the regular education environment);

C. at least one special education teacher of the student, or if appropriate, at least one special education provider of the student;

D the parent(s) of the student;

E. if appropriate, the student;

F. at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and,

G. an individual who can interpret the instructional implications of evaluation results.

b. Adolescent Transition - When considering transition services for a student with disabilities, at any age, the public agency shall also invite:

A. the student; and,

B. when the student is age 16 or older, a representative of any other agency that is likely to be responsible for providing or paying for the provision of transition services.

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C. Private Schools - Before a public agency places a student with a disability in, or refers a student to a private school or facility, the agency shall invite a representative of the private school or facility.

### 5.1.3. Individualized Education Program Content.

a. The IEP for each student shall include:

A. a statement of the student's present levels of educational performance, including:

(a) how the student's exceptionality affects the student's involvement and progress in the general curriculum; or

(b) for preschool children, as appropriate, how the disability affects the student's participation in appropriate activities.

B. a statement of measurable annual goals, including benchmarks or short term instructional objectives, which show a direct relationship to the present levels of educational performance and are related to:

(a) meeting the student's educational needs that result from the student's exceptionality to enable the student to be involved in and progress in the general curriculum, or for preschool students, as appropriate, to participate in appropriate activities; and

(b) meeting each of the student's other educational needs that result from the student's exceptionality.

C. a statement of the specific special education and related services, and supplementary aids/services to be provided to the student, or on behalf of the student, and a statement of program modifications or supports for school personnel that will be provided to enable the student:

(a) to advance appropriately toward attaining the annual goals; and

(b) to be involved and progress in the general curriculum and to participate in extra-curricular and other non-academic activities; and

(c) to be educated and participate with other students with and without exceptionalities in the activities described above.

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D. an explanation of the extent, if any, to which the student will not participate with non-exceptional students in the regular class and in the activities described in (C) above;

E. appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the benchmarks or short-term instructional objectives are being achieved;

F. a statement of any individual accommodations/modifications in the administration of statewide assessment of student achievement that are needed in order for the student to participate in the assessment and, if the IEP team determines that the student will not participate in a particular statewide assessment of student achievement (or part of the assessment), a statement of:

(a) why that assessment is not appropriate for the student; and

(b) how the student will be assessed.

G. The projected date for the beginning of the services and modifications and the anticipated frequency, location and duration of those services and modifications and supports for personnel;

H. a statement delineating extended school year services as specified in 5.1.5.i. of this section; and

I. a statement of how the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-exceptional student's progress, including:

(a) the student's progress toward the annual goals; and

(b) the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the academic year.

### 5.1.4. Consideration of Special IEP Factors.

a. The IEP team for a gifted student shall consider acceleration and the effects of acceleration on the student's graduation.

b. The IEP for a blind or partially sighted student shall also provide for instruction in Braille and the use of Braille unless the IEP team determines, after an

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evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student.

c. The IEP for a student whose behavior impedes his or her learning or that of others shall also include, if appropriate, strategies, including positive behavioral interventions, strategies and supports to address that behavior.

d. The IEP for a student with limited English proficiency shall include, if appropriate, the language needs of the student as these needs relate to the IEP.

e. The IEP shall include:

A. for each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), a statement of the transition service needs of the student that focuses on the student's programs of study; and

B. for each student with a disability beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

f. At least one year prior to a student's reaching the age of 18, the IEP must include a statement that the student has been informed of his or her rights under this policy, if any, that will transfer to the student when reaching age 18.

g. The IEP team shall consider the communication needs of the student.

h. The IEP for a student requiring assistive technology services and/or devices shall also include a specific statement of such services, including the nature and amount of such services and provision for home use, if determined appropriate by the IEP team.

i. The IEP team for a student who is deaf or hard of hearing shall consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and a full range of educational needs, including opportunities for direct instruction in the student's language and communication mode.

j. If, in considering the special factors described above, the IEP team determines that a student needs a particular device or service (including an intervention,

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accommodation, or other program modification) in order for the student to receive a free appropriate public education, the IEP team must include a statement to that effect in the student's IEP.

### 5.1.5. Individualized Education Program Team Responsibilities.

a. If additional evaluation is necessary, the IEP team shall refer the student for additional evaluation and may continue to develop the components of the IEP for which evaluation information is available.

b. The IEP team shall assure that:

A. If the student with disabilities, age 14 or older (or younger, if determined appropriate) does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered and documented;

B. If an agency invited to send a representative to a meeting at which transition services will be discussed does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services;

C. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives set out in the student's IEP; and

D. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

c. The IEP team shall review the IEP to determine whether the annual goals for the student are being achieved and to revise the IEP as appropriate to address:

A. any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

B. the results of any reevaluation conducted;

C. any information about the student provided to, or by, the parents;

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D. the student's anticipated needs; or

E. other matters.

d. In conducting a meeting to review, and, if appropriate, revise a student's IEP, the IEP team shall consider the factors described in paragraph (c) of this section.

e. The IEP team shall assure that:

A. to the maximum extent appropriate exceptional students, including students in public or private institutions or other care facilities, are educated with other students who are non-exceptional;

B. the removal from the regular education environment occurs only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily or for gifted students, content pacing and peer group interaction with the use of curriculum and grouping modifications within the regular class cannot be achieved sufficiently; and

C. the reasons for any removal of an exceptional student from the regular education environment are documented.

f. For students ages 6 - 21, placement shall be documented as one of the following placement options:

A. Regular Education: Full-Time - wherein the student's specially designed instruction and related services are delivered with non-exceptional individuals outside regular education classes or integrated community settings for less than 21% of the school day. This may include students placed in:

(a) regular class with special education/related services provided within regular class;

(b) regular class with instruction within the regular class and with special education/related services provided outside regular class; or

(c) regular class with special education services provided in a resource room.

B. Regular Education: Part-Time - wherein the student's specially designed instruction and related services are delivered with non-exceptional individuals outside

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regular education classes or integrated community settings for at least 21% but no more than 60% of the school day. This may include students placed in:

(a) resource rooms with special education/related services provided within the resource room; or

(b) resource rooms with part-time instruction in a regular class.

C. Special Education: Separate Class - wherein the student's specially designed instruction and related services are delivered outside regular classes or integrated community settings for more than 60% of the school day. This may include students placed in:

(a) separate special classrooms with part-time instruction in a regular class; or

(b) separate special classrooms full-time on a regular school campus.

D. Special Education: Special School - wherein the student's specially designed instruction and related services are delivered in a special school that serves only exceptional students for more than 50% of the student's school day.

E. Special Education: Out-of-School Environment - wherein the student's specially designed instruction and related services are temporarily delivered in:

(a) a non-school environment, such as a public library, group home or mental health center;

(b) a medical treatment facility/hospital; or

(c) the home.

F. Special Education: Residential Facility - wherein the student's specially designed instruction and related services are delivered in a facility which provides twenty-four (24) hour care and supervision.

g. For students ages 3-5, placement shall be documented as one of the following placement options:

A. Home - wherein all of the specially designed instruction and related services are delivered in the principal residence of the child's family or care givers;

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B. Early Childhood Setting - wherein all of the student's specially designed instruction and related services are delivered in educational programs designed primarily for children without disabilities. This may include, but is not limited to: regular kindergarten classes; public or private preschools; Head Start Centers; child care facilities; preschool classes offered to an eligible pre-kindergarten population by the public agency; home/early childhood combinations; home/Head Start combinations; and other combinations of early childhood settings;

C. Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting - wherein the specially designed instruction and related services are delivered in multiple settings, such that: (a) general and/or special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and (b) special education and related services are provided in programs designed primarily for children with disabilities. This may include, but is not limited to: home/early childhood special education combinations; Head Start, child care, nursery school facilities, hospital facilities on an outpatient basis, or other community-based settings with special education provided outside of the regular class; regular kindergarten classes with special education provided outside of the regular class; separate school/early childhood combinations; and residential facility/early childhood combinations;

D. Reverse Mainstream Setting - wherein all of the special education and related services are delivered in educational programs designed primarily for children with disabilities but that include 50 percent or more children without disabilities.

E. Early Childhood Special Education Setting - wherein all of the specially designed instruction and related services are delivered in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. This may include, but is not limited to: special education classrooms in regular buildings; special education classrooms in child care facilities, hospital facilities on an outpatient basis, or other community-based settings;

F. Itinerant Service Outside the Home - wherein all of the special education and related services are delivered at a school, hospital facility on an outpatient basis, or other location for a short period of time. These services may be provided individually or to a small group of children. This may include, but not limited to: speech instruction up to 3 hours per week in a school, hospital, or other community-based setting.

h. The IEP team shall assure that the educational placement of each exceptional student, including a preschool child with a disability:

A. is determined at least annually;

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(a) exhibits, or may exhibit, regression during an interruption in educational programming;

(b) exhibits, or may exhibit, a limited ability to recoup, or relearn skills, once programming has resumed; and

(c) exhibits regression/recoupment problem(s) that interfere with the maintenance of identified critical skills as described in the current IEP; and/or

(d) other factors that interfere with maintenance of identified critical skills as described in the current IEP, such as likelihood of regression, slow recoupment and predictive data.

C. The lack of clear evidence of such factors may not be used to deny a student ESY services, if the IEP team determines the need for such services and includes ESY in the IEP;

D. The ESY services shall consist of activities developed to maintain critical skills identified on the IEP developed for the academic year;

(a) The IEP team shall document the duration, number of hours per week, and physical location of the special education and related services to be delivered;

(b) The type and length of the services the student requires is determined on an individual basis by the IEP team;

(c) ESY services for a student with disabilities do not have to be comparable to the services previously provided during the academic year.

E. ESY services may not be limited to a particular category of disability or be unilaterally limited in the type, amount or duration of those services;

F. The public agency shall annually inform parents of students with disabilities of the availability of ESY services and the procedures and criteria for determining a student's need for ESY services, and of their right to refuse ESY services.

### **§126-16-6. Administration of Services.**

6.1. Policy Statement: Each public agency shall provide the special education and related services necessary to implement each student's Individualized Education Program

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(IEP). Specific methods for providing the services, including the accurate collection and reporting of student data, shall be stated in each public agency's policies and procedures.

### 6.1.1. Initiation of Services.

a. A complete IEP shall be in effect prior to the provision of special education and related services.

b. Services shall be implemented as soon as possible following the completion of the IEP.

c. Short delays in the immediate initiation of services can occur when IEP team meetings are held during the summer or a vacation period, or when arrangements for services, such as transportation, must be made.

d. A current IEP shall be in effect at the beginning of each school year for each exceptional student receiving special education and related services.

### 6.1.2. Provision of IEP Information.

a. The student's IEP shall be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

b. Each teacher and provider described in Section 6.1.2(a) shall be informed of:

A. His or her specific responsibilities related to implementing the student's IEP; and

B. The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

### 6.1.3. Provision of Staff.

a. Each public agency shall provide qualified personnel with the training and skills necessary to implement the IEP of each student assigned to them.

b. Professional special education personnel shall meet minimum certification standards for the area(s) of exceptionality(ies) in which they have primary responsibility for the provision of related and/or instructional services.

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c. Service personnel shall be appropriately trained and supervised by qualified professionals.

### 6.1.4. Provision of Services.

a. Students with exceptionalities shall be provided services in settings that serve age-appropriate non-exceptional peers.

b. Appropriate grouping of students with exceptionalities for specially designed instruction must be based upon meeting the students' similar social, functional and/or academic needs, as specified in their IEPs.

### 6.1.5. Caseloads.

a. The following caseloads remain effective until July 1, 2000.

A. The maximum caseload for teachers providing special education services for students with behavior disorders, mental impairments, orthopedic impairments, and specific learning disabilities are as follows:

(a) Regular Education: Full-Time - Assign no more than 40 exceptional students (unduplicated) who are placed in Regular Education: Full-time to a teacher providing consultative services. A teacher providing consultative services may serve additional exceptional students (duplicated), but the maximum number served shall not exceed a total of 45 students;

(b) Regular Education: Part-Time - Assign no more than 30 students (unduplicated) who are placed in Regular Education: Part-time to a teacher providing services. A teacher providing services can serve additional exceptional students (duplicated), but the maximum number served shall not exceed a total of 35 students. The caseload during any one instructional period for a teacher providing services shall not exceed eight (8) students at the early childhood education level (ECE) or ten (10) students at the middle childhood (MCE) and adolescent education (AE) levels;

(c) Special Education: Separate Class - The caseloads for teachers providing instructional services to exceptional students who are served in regular education for 40% or less of the school day are specified in Section 6.1.4.b of this policy;

(d) Caseloads for special education teachers assigned to provide a combination of consultative, supplementary and separate class services shall be determined on a percentage basis;

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(e) When students from more than one programmatic level are served together in one instructional period, the maximum class size shall be that of the programmatic level of the youngest student(s) served;

b. The maximum caseloads for teachers providing special education services for students with autism, blind and partial sight, deafness-blindness, deafness and other hearing impairments, giftedness, other health impairments, preschool special needs, speech/language impairments, and traumatic brain injuries placed in Regular Education: Full-Time or Regular Education: Part-Time are as follows:

### A. Autism

(a) Regular Education: Full-Time - Assign no more than 20 students;

(b) Regular Education: Part-Time - Assign no more than ten (10) students with a limit of six (6) during any one instructional period;

(c) Special Education: Separate Class - Assign no more than four (4) students with autism. An aide shall be assigned on the basis of student needs.

### B. Behavior Disorders

(a) Special Education: Separate Class

(A) Assign no more than four (4) students without a full-time aide with a limit of four (4) during any one instructional period;

(B) Assign no more than eight (8) students with a full-time aide with a limit of eight (8) during any one instructional period.

### C. Blind and Partially Sighted

(a) Regular Education: Full-Time - Assign no more than 30 students;

(b) Regular Education: Part-time -Assign no more than 15 students with a limit of five (5) during any one instructional period;

(c) Special Education: Separate Class

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(A) Assign no more than five (5) students without a Full-Time aide with a limit of five (5) during any one instructional period;

(B) Assign no more than ten (10) students with a Full-Time aide with a limit of ten (10) during any one instructional period.

### D. Deaf-Blindness

(a) Regular Education: Full-Time - Assign no more than 20 students;

(b) Regular Education: Part-time - Assign no more than ten (10) students with a limit of five (5) during any one instructional period.

### E. Deaf and Hard of Hearing

(a) Regular Education: Full-Time - Assign no more than 30 students;

(b) Regular Education: Part-Time - Assign no more than 15 students with a limit of five (5) during any one instructional period;

(c) Special Education: Special Class

(A) Assign no more than five (5) students without a Full-Time aide with a limit of five (5) during any one instructional period;

(B) Assign no more than ten (10) students with a Full-Time aide with a limit of ten (10) during any one instructional period.

### F. Gifted

(a) Regular Education: Full-Time - Assign no more than 45 students;

(b) Regular Education: Part-Time;

(A) Assign no more than 40 students;

(B) Assign no more than 15 students during any one instructional period.

(c) Special Education: Separate Class - Assign no more than 15 students with a limit of 15 during any one instructional period.

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### G. Mentally Impaired

#### (a) Special Education: Separate Class;

(A) Assign no more than eight (8) mildly mentally impaired students without a Full-time aide with a limit of eight (8) during any one instructional period;

(B) Assign no more than 12 mildly mentally impaired students with a Full-time aide with a limit of 12 during any one instructional period;

(C) Assign no more than five (5) moderately mentally impaired students without a Full-time aide with a limit of five (5) during any one instructional period.

(D) Assign no more than 12 moderately mentally impaired students with a Full-time aide with a limit of 12 during any one instructional period;

(E) Assign no more than six (6) mildly or moderately mentally impaired students to a combination program without a Full-time aide with a limit of six (6) during any one instructional period;

(F) Assign no more than eight (8) moderately or severely mentally impaired students to a combination program with a Full-time aide with a limit of eight (8) during any one instructional period;

(G) Assign no more than six (6) severely mentally impaired students with a Full-time aide with a limit of six (6) during any one instructional period;

(H) Assign no more than nine (9) severely mentally impaired students with two Full-time aides with a limit of nine (9) during any one instructional period;

(I) Assign no more than six (6) profoundly mentally impaired students with a Full-time aide with a limit of six (6) during any one instructional period;

(J) Assign no more than nine (9) profoundly mentally impaired students with two Full-time aides with a limit of nine (9) during any one instructional period.

(b) Instructional Assistance - In a severely or profoundly mentally impaired separate class of three (3) or less students, an aide shall be assigned on the basis of student needs;

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(c) Combination Program - A combination program for students with different levels of severity (e.g. severe-profound, moderate-severe) may be used. Academic, self-care, affective, communication and sensorimotor needs of these students must be similar.

### H. Orthopedically Impaired

#### (a) Special Education: Separate Class

(A) Assign no more than ten (10) students with a Full-time aide with limit of ten (10) during any one instructional period;

(B) In a separate class of three (3) or less students with orthopedic impairments, an aide shall be assigned on the basis of student needs.

### I. Other Health Impaired

Students identified as other health impaired shall be assigned to and served by personnel who have the training necessary to implement the student's IEP.

### J. Preschool Special Needs

#### (a) Family Consultation - Assign no more than 15 children;

#### (b) Center-Based Programs;

(A) Regular Education: Full-Time - Assign no more than 20 children;

(B) Regular Education: Part-Time - Assign no more than 15 children;

#### (C) Special Education Program: Separate Class:

(1.) Assign no more than eight (8) eligible children per session with an aide for a maximum caseload of (16);

(2.) Assign no more than ten (10) eligible children per session with two (2) aides for a maximum caseload of twenty (20).

#### (c) Combination Center-Based/Family Consultation Program

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(A) Assign no more than eight (8) children per session with an aide for a maximum caseload of sixteen (16);

(B) Assign no more than ten (10) children per session with two (2) aides for a maximum caseload of twenty (20).

### L. Speech/Language Impairments

(a) Regular Education: Full-Time - Assign no more than 50 students without an aide;

(b) Regular Education: Part-Time;

(A) Assign no more than 50 students for those receiving services less than five hours per week with a limit of five (5) during a session;

(B) The caseload during any one instructional period for a therapist providing supplementary services shall not exceed eight (8) students at early childhood education level (ECE) or ten (10) students at the middle childhood (MCE) and adolescent education (AE) levels.

(c) Special Education: Separate Class

(A) Assign no more than ten (10) students without an aide with a limit of ten (10) during any one instructional period;

(B) Assign no more than 12 students with a Full-time aide with a limit of 12 during any one instructional period. (Special Education: Separate Class is a program delivery option for severely or multiply communicatively impaired students and those who exhibit normal potential in performance areas but severe language deficits. Application shall be made to the State Department of Education for approval of individual program).

### M. Traumatic Brain Injuries

(a) Students identified as having traumatic brain injuries shall be assigned to and served by personnel who have the training necessary to implement the students' IEPs.

b. The following process for determining caseloads shall become effective July 1, 2000.

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A. Each public agency shall establish and maintain a system for monitoring the collective caseload of each special educator, speech-language pathologist and/or speech-language assistant serving students within the public agency's jurisdiction.

B. Caseloads shall be based upon the number of students being served, the amount of direct and/or indirect instruction needed by each student, the frequency of supplementary aids/services needed by the student and provided by a special educator and the other duties assigned to the special educator (e.g. screening, diagnostic evaluations, itinerant travel time).

C. Each public agency shall use the following process to determine caseloads:

(a) Document each student's level of need by aggregating the total amount of services required from a special educator or speech-language pathologist and assigning a "rating" for the services for each student as follows:

(A) Rating #1- wherein the IEP documents the student's need for direct or indirect instruction and supplementary aids/services which total **up to 360 minutes per week**;

(B) Rating #2 - wherein the IEP documents the student's need for direct or indirect instruction and supplementary aids/services which total **361-720 minutes per week**;

(C) Rating #3 - wherein the IEP documents the student's need for direct or indirect instruction and supplementary aids/services which total **721 or more minutes per week**;

D. The building level administrator, in collaboration with the public agency's director of special education, shall compile the ratings of services for students assigned to a school or area. Compiled ratings shall be used to determine a special educator's weighted caseload. Weighted caseloads shall not exceed 40 per special educator, 50 per speech/language pathologist and 50 per teacher of gifted.

E. When a special educator provides other non-instructional special education services (e.g. itinerant travel time, diagnostic evaluations, screening services) during the week, the weighted caseload shall be adjusted by multiplying the allowable weighted caseload by the percentage of the week the special educator has available to provide direct and indirect instruction and/or supplemental aids/services;

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F. Service personnel shall be assigned based upon students' needs for supports (either individually or collectively) as described in their IEPs.

### 6.1.6. Private School Placements by the Public Agency.

a. Before a public agency places a student with a disability in, or refers a student to, a private school or facility the public agency shall:

A. initiate and conduct a meeting to develop an IEP for the student; and

B. ensure that a representative of the private school or facility attends the meeting; or

C. use other methods to ensure participation by the private school or facility, including individual or conference telephone calls if the representative cannot attend.

b. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency. If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

A. Are involved in any decision about the student's IEP; and

B. Agree to any proposed changes in the IEP before those changes are implemented.

c. Even if a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the public agency and the West Virginia Department of Education (WVDE).

d. If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, must be at not cost to the parents of the student.

#### e. Out-of-State Placement.

A. Prior to placing a student with a disability in a private school or facility outside of West Virginia, the public agency shall document:

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(a) a free appropriate public education cannot be provided within the county, within the region, or within the state, and that those determinations are justified;

(b) more than one private school or facility was investigated in regard to the feasibility of providing services;

(c) the selected private school or facility has approved status in the state in which it is located, and assurances were provided that the school or facility meets the requirements of the IDEA, as amended;

(d) a current and complete IEP has been developed; and

(e) a current signed contract between the public agency and the private school or facility exists.

### 6.1.7. Private School Placements by Parents.

a. No private school student with an exceptionality has an individual right or entitlement to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

b. Decisions about the services that will be provided to private school students with exceptionalities must be made in accordance with paragraphs (c) and (d) of this section.

c. Each public agency shall consult, in a timely and meaningful way, with appropriate representatives of private school students with exceptionalities, regarding the number of private school students with exceptionalities, the needs of private school students with exceptionalities, and their location to decide:

A. Which students will receive services under this section;

B. What services will be provided;

C. How and where the services will be provided; and

D. How the services provided will be evaluated.

d. Each public agency shall give appropriate representatives of private school students with exceptionalities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

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e. The consultation required in paragraph (c) of this section must occur before the public agency makes any decision that affects the opportunities of private school students with exceptionalities to participate in services under Section 6.1.7.

f. The public agency shall make the final decisions with respect to the services to be provided to eligible private school students.

g. If a student with an exceptionality is enrolled in a private school and will receive special education or related services from a public agency, the public agency shall:

A. Initiate and conduct meetings to develop, review, and revise a services plan for the student, in accordance with Sec. 6.1.7.j; and

B. Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the public agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

h. The services provided to private school students with exceptionalities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

i. Private school students with exceptionalities may receive a different amount of services than students with exceptionalities in public schools.

j. Each private school student with an exceptionality who has been designated to receive services under this section must have a services plan that describes the specific special education and related services that the public agency will provide to the student.

A. The services plan must, to the extent appropriate:

(a) Meet the requirements of Section 5.1.3 with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with §126-16-5 and §126-16-6 of this policy.

k. Services provided to private school students with exceptionalities may be provided on-site at a student's private school, including a religious school, to the extent consistent with law.

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A. If necessary for the student to benefit from or participate in the services provided under this part, a private school student with an exceptionality must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the service.

B. Public agencies are not required to provide transportation from the student's home to the private school;

C. The cost of the transportation described in paragraph (A) of this section may be included in calculating whether the public agency has met the requirement of Section 6.1.7.c.

### **§126-16-7. Discipline.**

7.1. Policy Statement: Each public agency shall: 1) protect the rights of an eligible student with a disability whenever removal from the educational placement is considered as a disciplinary action; 2) proactively design and implement positive behavioral interventions, strategies and supports to address behaviors that interfere with learning; and 3) provide instruction to assist the student to access and progress in the general curriculum and meet the goals in the student's IEP. Specific methods for implementing these requirements shall be stated in each public agency's policies and procedures.

7.1.1. Authority of school personnel for removals of not more than 10 school days at a time.

a. School personnel may remove a student with a disability from the current educational placement for not more than 10 school days at a time for violations of school rules; and

b. School personnel may order additional removals from the current educational placement of not more than 10 school days at a time in the same school year for separate incidents of misconduct, as long as the additional removal is:

A. not a change of placement; and

B. administered for the same amount of time as for non-disabled students.

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c. School personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP when removals accumulate to more than 10 school days in a school year and are not a change of placement.

d. Within 10 business days of the first time the student is removed from school for more than 10 cumulative school days in a school year; the public agency shall:

A. convene an IEP meeting to develop an assessment plan if the student has not previously had a functional behavioral assessment and behavior intervention plan; and

B. reconvene an IEP meeting when the functional behavior assessment is completed to develop interventions that address the removal behavior;

C. If the student already has a behavior intervention plan, convene an IEP meeting to review the plan and its implementation, and modify the plan and its implementation as necessary to address the removal behavior.

e. When the student receives further suspensions for up to 10 school days at a time, the IEP team members shall individually review the behavior intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

### 7.1.2. Change of Placement.

a. A change of placement from the current educational placement occurs if:

A. The removal is for more than 10 consecutive school days (including removal to an interim alternative educational setting); or

B. The removals are administered in a series that constitutes a pattern because they accumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student has been removed and the proximity of removals to one another.

b. Whenever a change of placement is being considered, the public agency shall:

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A. Immediately provide the parent with written prior notice as specified in Section 8.1.1 of the decision to remove the student and the procedural safeguards notice; and

B. Immediately schedule an IEP meeting to be held within 10 business days of the change of placement removal decision to determine the relationship between the student's disability and the behavior subject to the disciplinary action (manifestation determination) and to conduct the activities listed in Section 7.1.1(d).

c. The IEP team, with parent agreement, may determine that a change in placement through the IEP process rather than through these disciplinary procedures is needed. Students may receive a change of placement through the IEP process for any time period determined appropriate by the team, as long as the parent does not object.

### 7.1.3. Manifestation Determination.

a. In making a manifestation determination, the IEP team shall:

A. Consider all relevant information in terms of the behavior subject to the disciplinary action, including:

(a) evaluation and diagnostic results, including information supplied by the parents;

(b) observations of the student; and

(c) the student's IEP and placement.

B. Determine that in relationship to the behavior subject to the disciplinary action:

(a) the IEP and placement were appropriate and the special education services, supplementary aids and services and behavior intervention strategies were provided consistent with the student's IEP and placement;

(b) the student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) the student's disability did not impair the student's ability to control the behavior subject to disciplinary action.

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b. If the IEP team determines that any of the standards in Section 7.1.3(a)(B) were not met, the behavior must be considered to be a manifestation of the student's disability;

c. If the IEP team identifies deficiencies in the student's IEP or placement or in their implementation, immediate steps must be taken to remedy those deficiencies;

d. If the IEP team determines the behavior was not a manifestation of the student's disability:

A. the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to other students; and

B. services must be provided to the extent necessary, as determined by the IEP team, to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

e. If the public agency initiates disciplinary procedures applicable to all students, the public agency shall transmit the special education and disciplinary records of the student for consideration by the person or persons making the final determination regarding the removal.

### 7.1.4. Removal for Weapons and Drugs.

a. If a student with a disability carries a dangerous weapon or knowingly possesses or uses illegal drugs or sells or solicits a controlled substance, an IEP team may change the student's placement to an interim alternative educational setting (IAES) for not more than 45 days, as long as such a placement is selected to:

A. Enable the student to continue progress in the general curriculum;

B. Enable the student to continue to receive those services and modifications including those in the current IEP that will enable the student to meet the goals in the IEP; and

C. Include services and modifications to address the behavior for which the student has been removed which are designed to prevent the behavior from recurring.

b. A change of placement to an IAES invokes the procedures set forth in Sections 7.1.2 and 7.1.3.

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### 7.1.5. Expedited Due Process Hearings and Student Status During Appeals.

a. A parent may request an expedited due process hearing if he or she disagrees with the manifestation determination made in Section 7.1.3 or any decisions regarding placement in this section.

A. If a parent challenges an IAES placement decision, the student remains in the IAES pending the hearing decision or until the expiration of the time period for the placement (up to 45 days), whichever comes first, unless the parent and public agency agree otherwise.

B. If the parent challenges a manifestation determination or change of placement decision (other than an IAES) in a case in which the student has been removed for more than 10 school days at a time, the student returns at the end of the 10 school day removal to the prior to removal placement, pending the hearing decision, unless the parent and public agency agree otherwise.

b. The public agency may request an expedited due process hearing, if, during the pendency of the expedited due process hearing to challenge a manifestation determination, school personnel maintain it is dangerous for the student to be in or return to the placement prior to removal placement.

A. The hearing officer shall determine whether the student may be placed in an IAES or in another setting for up to 45 days.

B. The public agency may repeat the process of requesting an expedited due process hearing to remove the student from school for up to 45 days, as necessary.

c. An expedited due process hearing request may be submitted in writing to the public agency or the WVDE. Requests submitted to the public agency shall be submitted to the WVDE by the next business day.

d. Expedited hearings shall be conducted and a written decision issued within 45 days of receipt of the hearing request by the WVDE, without exceptions or extensions.

e. Each party shall disclose to all other parties, at least two (2) business days prior to an expedited hearing, all evidence that party intends to use at the hearing.

f. The decisions rendered through the expedited hearing process may be appealed through civil action.

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### 7.1.6. Authority of the Due Process Hearing Officer.

a. A hearing officer may order a change of placement to an IAES for not more than 45 days, if the hearing officer in an expedited due process hearing:

A. Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;

B. Considers the appropriateness of the student's current placement;

C. Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

D. Determines that the IAES that is proposed by school personnel who have consulted with the student's special education teacher:

(a) Is selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in the IEP; and

(b) Includes services and modifications to address the behavior subject to the disciplinary action that are designed to prevent the behavior from recurring.

b. In reviewing a manifestation determination decision, the hearing officer shall determine whether the public agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of Section 7.1.3.

c. In reviewing an IAES decision, the hearing officer shall apply the standards described in Section 7.1.6(a).

### 7.1.7. Referral To and Action By Law Enforcement and Judicial Authorities.

a. A public agency may report a crime committed by a student with a disability to appropriate law enforcement and judicial authorities.

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b. Law enforcement and judicial authorities may exercise their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

c. Copies of the special education and disciplinary records shall be transmitted for consideration by the appropriate authorities to whom it reports the crime to the extent permitted by the Family Educational Rights and Privacy Act (FERPA) and Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Records.

### 7.1.8. Protections for Students Not Yet Determined Eligible.

a. A student may assert protections of this part if the public agency had knowledge as defined in A of this part that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

A. A public agency shall be deemed to have knowledge if:

(a) the parent expressed concern in writing (or orally if parent does not write or has a disability preventing a written statement) to personnel of the appropriate public agency that the student is in need of special education and related services;

(b) the behavior or performance of the student demonstrates the need for special education and related services;

(c) the parent has requested an evaluation of the student for special education and related services; or

(d) the teacher of the student or other personnel of the public agency expressed concern about the behavior or performance of the student to the director of special education or to other personnel in accordance with the public agency's child find or referral process.

B. A public agency would not be deemed to have knowledge if, as a result of receiving the information specified above, the public agency either:

(a) conducted an evaluation and determined the student was not a student with a disability; or

(b) determined that an evaluation was not necessary; and

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(c) provided notice which meets the requirements of Section 8.1.1 to the parent of its determination.

b. If a public agency does not have knowledge prior to taking disciplinary measures, the student may be subjected to the same disciplinary measures as applied to non-disabled students who engaged in comparable behaviors.

c. If a request is made for a multidisciplinary evaluation during the time period in which the student is subjected to disciplinary measures:

A. the evaluation must be conducted in an expedited manner; and

B. until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

d. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the public agency and information provided by the parents, the public agency shall provide special education and related services in accordance with the provisions of this section and Section 6.1 of these regulations.

### **§126-16-8. Procedural Safeguards.**

8.1. Policy Statement: Each public agency shall protect the rights of each exceptional student and her or his parents, with respect to the provision of a free appropriate public education. Specific methods for addressing these requirements shall be stated in each agency's policies and procedures.

#### 8.1.1. Prior Notice; Content of Notice.

a. Written notice must be given to the parents of an exceptional student within a reasonable time before the public agency:

A. proposes to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student; or

B. refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student.

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b. If the notice relates to an action proposed by the public agency that also requires parental consent, the agency may give notice at the same time it requests parent consent.

c. The notice must include:

A. a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the public agency considered and the reasons why those options were rejected;

B. a description of each evaluation procedure, test, record or report the public agency used as a basis for the proposal or refusal; and

C. a description of any other factors which are relevant to the public agency's proposal or refusal;

D. a statement that the parents of a student with an exceptionality have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

E. sources for parents to contact to obtain assistance in understanding the provisions of the procedural safeguards.

### 8.1.2. Procedural Safeguards Notice.

a. A copy of the procedural safeguards available to the parents must be given to the parents, at a minimum:

A. upon initial referral for evaluation;

B. upon each notification of an IEP team meeting;

C. upon reevaluation of the student;

D. upon receipt of a request for due process hearing; and

E. with notification of a disciplinary change of placement.

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b. The procedural safeguards notice must include a full explanation of all the procedural safeguards relating to:

- A. independent educational evaluation;
- B. prior written notice;
- C. parental consent;
- D. access to educational records;
- E. opportunity to initiate due process hearings;
- F. the student's placement during pendency of due process proceedings;
- G. procedures for students who are subject to placement in an interim alternative educational setting;
- H. requirements for unilateral placement by parents of students in private schools at public expense;
- I. mediation;
- J. due process hearings, including requirements for disclosure of evaluation results and recommendations;
- K. civil actions;
- L. attorneys' fees; and
- M. the state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

### 8.1.3. Notice in Understandable Language.

- a. Both prior notice and the notice of procedural safeguards must be:
  - A. written in language understandable to the general public; and
  - B. provided in the native language of the parent or other mode of communication used by the parent, unless it clearly is not feasible to do so.

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b. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure:

A. that the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

B. that the parent understands the content of the notice; and

C. that there is written evidence that the above requirements have been met.

### 8.1.4. Parental Consent.

a. Parental consent must be obtained before:

A. conducting an initial evaluation or reevaluation; and

B. initial provision of special education and related services to an exceptional student.

b. When a student with a disability transitions from Part C to Part B, the public agency shall:

A. provide the student's parents a detailed explanation of the differences between an IFSP and an IEP; and

B. if the parents choose an IFSP, obtain written informed consent from the parents.

c. Except for pre-placement evaluation, initial placement, and reevaluation, refusal to consent shall not be used to deny the parent or student any other service, benefit or activity of the public agency;

d. Parental consent is not required:

A. before reviewing existing data as part of an evaluation or a reevaluation;

B. before administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students; and/or

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C. for reevaluation, if the public agency can demonstrate that it has taken reasonable measures to obtain that consent and the student's parent has failed to respond. A public agency must have a record of its attempts to obtain parental consent such as;

(a) detailed records of telephone calls made or attempted and the results of those calls;

(b) copies of correspondence sent to the parents and any responses received; and/or

(c) detailed records of visits made to the parent's home or place of employment and the results of those visits.

e. If the parents of a student with an exceptionality refuse consent for initial evaluation or a reevaluation, the public agency may continue to pursue those evaluations by using the due process hearing procedures, or the mediation procedures if appropriate.

f. The public agency may use mediation or the impartial due process hearing procedures, if appropriate, to determine if the student may be evaluated, initially provided special education and related services or reevaluated without parental consent.

### 8.1.5. Surrogate Parents.

a. Each public agency shall assure that the rights of a student are protected when:

A. no parent can be identified;

B. the public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

C. the student is a ward of the state under the West Virginia Statutes.

b. The duty of a public agency includes the assignment of an individual to act as a surrogate for the parents. This must include a method:

A. for determining whether a student needs a surrogate parent; and

B. for assigning a surrogate parent to the student.

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c. Public agencies shall ensure that a person selected as a surrogate has no interest that conflicts with the interests of the student represented and has knowledge and skills that ensure adequate representation of the student;

d. A person assigned as a surrogate may not be an employee of the WVDE, the local educational agency or any other agency, that is involved in the education or care of the student. A person who otherwise qualifies to be a surrogate parent is not an employee of the public agency solely because he or she is paid by the public agency to serve as a surrogate parent;

e. A public agency may select as a surrogate a person who is an employee of a non-public agency that only provides non-educational care for the student and who meets the standards in c. and d. above;

f. The surrogate parent may represent the student in all matters related to:

- A. the identification, evaluation and educational placement of the student;
- and,
- B. the provision of a free appropriate public education to the student.

### 8.1.6. Transfer of Parental Rights at Age of Majority.

a. When an exceptional student reaches the age of majority (18) under state law that applies to all students (except for a student with an exceptionality who has been determined to be incompetent under state law);

A. the public agency shall provide any notice required to both the individual and the parents; and all other rights accorded to parents under this policy transfer to the student, and

B. all rights accorded to parents under this policy transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution;

b. Whenever rights are transferred to a student, the public agency shall notify the individual and the parents of the transfer of rights.

8.1.7. Parental Participation - To ensure parental participation in the special education process, the public agency shall:

a. Afford the parents of an exceptional student an opportunity to:

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A. inspect and review all education records with respect to the identification, evaluation and educational placement of the student; and the provision of a free appropriate public education to the student; and

B. participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

b. Provide written notice to ensure that parents have the opportunity to participate in meetings, including EC and IEP meetings, with respect to the identification, evaluation and educational placement of the student, and the provision of a free, appropriate public education to the student;

A. Each public agency shall take steps to ensure that one or both of the parents of the exceptional student are present at each meeting and are afforded the opportunity to participate, including:

(a) notifying parents of the meeting early enough to ensure that they will have the opportunity to attend; and

(b) scheduling the meeting at a mutually agreed on time and place.

B. The written notice must include

(a) the purpose, time, and location of the meeting;

(b) who will be in attendance;

(c) an explanation that at the discretion of the public agency or parent other individuals who have knowledge or special expertise regarding the student, as determined by the public agency or the parent inviting the individual, can attend the meeting; and

(d) a full explanation of all the procedural safeguards available to the parents.

C. If a purpose of the meeting is also the consideration of adolescent transition service needs for the student, at age 14, or younger if appropriate, the written notice must also:

(a) indicate this purpose; and

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(b) indicate that the agency will invite the student.

D. If a purpose of the meeting is also the consideration of needed adolescent transition services for the student, at age 16 or younger if appropriate, the written notice must also:

(a) indicate this purpose;

(b) indicate that the agency will invite the student; and

(c) identify any other agency that will be invited to send a representative.

c. Take whatever action is necessary to ensure that the parent understands the proceedings at a meeting including arranging for an interpreter for parents who are deaf or whose native language is other than English;

d. Conduct the EC and/or IEP team meeting without a parent in attendance only when the public agency has documentation that other methods of ensuring parent participation, such as correspondence, telephone calls, and visits to the parents' home have been attempted.

A. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

B. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(a) detailed records of telephone calls made or attempted and the results of those calls;

(b) copies of correspondence sent to the parents and any responses received; and/or

(c) detailed records of visits made with the parents and the results of those visits.

e. Obtain written parental consent for initial placement in special education or implement mediation or due process hearing procedures to obtain consent; and

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f. Provide the parent a copy of the IEP, at no cost to the parent.

### 8.1.8. Evaluation.

a. Each public agency shall ensure, at a minimum, that the following requirements are met:

A. Tests and other evaluation materials used to evaluate a student:

(a) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(b) Are provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

B. Materials and procedures used to evaluate a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has an exceptionality and needs special education, rather than measuring the student's English language skills;

C. A variety of evaluation tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent, and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool student, to participate in appropriate activities), that may assist in determining:

(a) Whether the student is a student with an exceptionality under Section 4.1.3; and

(b) The content of the student's IEP.

D. Any standardized tests that are given to a student:

(a) Have been validated for the specific purpose for which they are used;  
and

(b) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests;

(c) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications

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of the person administering the test, or the method of test administration) must be included in the evaluation report.

E. Tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

F. Tests are selected and administered so as best to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's ability or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

G. No single procedure is used as the sole criterion for determining whether a student is a student with an exceptionality and for determining an appropriate educational program for the student;

H. The student is evaluated in all areas related to the suspected exceptionality, including, if appropriate, health, vision, hearing, social and emotional status, adaptive skills, general intelligence, academic performance, communicative status, and motor abilities.

I. In evaluating each student with an exceptionality under as defined in 4.1.3, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the category of exceptionality in which the student has been classified;

J. The public agency uses technically sound instruments that may evaluate the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;

K. The public agency uses evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

### 8.1.9. Independent Education Evaluation.

a. The parents of an exceptional student have the right to obtain an independent educational evaluation of the student. Each public agency shall provide to parents, on request for an independent education evaluation, information about where an independent

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educational evaluation may be obtained and the agency criteria applicable set forth in (f) of this section.

b. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate, or ensure an independent educational evaluation is provided at public expense, unless the agency demonstrates in a due process hearing that the evaluation obtained by the parent did not meet agency criteria. If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent education evaluation but not at public expense.

c. If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

d. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

A. must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education to the student; and

B. may be presented as evidence at a due process hearing regarding that student.

e. If a hearing officer requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

f. Whenever an independent evaluation is at public expense:

A. the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the evaluator(s), must be the same as the criteria that the public agency uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation; and

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B. except for criteria in above paragraph of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

### 8.1.10. Mediation.

a. Mediation is encouraged and available to parties who have a dispute relating to the identification, evaluation, or educational placement of an exceptional student, or the provision of a free appropriate public education. Mediation is available independent of or subsequent to a due process hearing request, including expedited hearings regarding a disciplinary change of placement including removal to an IAES.

b. The WVDE shall administer a system of mediation which ensures:

A. mediation is voluntary on the part of the parties;

B. mediation may not be used to deny or delay a parent's right to a due process hearing or to any other rights under this policy;

C. mediation is conducted by a qualified and impartial mediator;

D. the WVDE bears the cost of the mediation process;

E. parties may be assisted in the mediation process by persons with special knowledge or training with respect to the student, the needs of exceptional students, mediation procedures or special education law and regulations;

F. each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute;

G. an agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement; and

H. discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be asked to sign a confidentiality pledge prior to the commencement of mediation.

c. Qualifications of mediators:

A. a mediator may not be:

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(a) an employee of any local educational agency or any State agency receiving IDEA, Part B sub-grants; or

(b) an employee of a state education agency that is providing direct services to a student who is the subject of the mediation process; or

(c) an attorney or advocate who represents boards of education or parents against boards of education; or

(d) a person having a personal or professional conflict of interest.

B. a person who otherwise qualifies as a mediator is not an employee of a local educational agency or State agency solely because he or she is paid by the agency to serve as a mediator;

C. a mediator must be trained in effective mediation techniques and in the requirements of the IDEA and these regulations; and

D. mediators are verified by the WVDE as having met the requirements for qualified mediators. The WVDE maintains a list of the individuals who are qualified mediators.

d. Process for initiating mediation:

A. a request for mediation may be filed independent of or subsequent to filing a due process hearing;

B. parents are informed of mediation:

(a) through the procedural safeguards notice;

(b) upon requesting information from the public agency or WVDE; and

(c) upon filing a request for a due process hearing;

C. a party may request mediation in a dispute relating to the identification, evaluation, or educational placement of an exceptional student, or the provision of a free appropriate public education by submitting a written request to the public agency or the WVDE;

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D. a public agency receiving a mediation request shall forward the request to the WVDE within three (3) calendar days of receipt of the request, except when mediation is requested regarding issues in an expedited due process hearing, which shall be forwarded to the WVDE by the next business day;

E. if both parties agree to participate in mediation, the WVDE shall assign a mediator from the list of qualified mediators on a rotational basis;

F. the mediation session must be completed within 20 calendar days of receipt by the WVDE of a request for mediation unless the timeline is extended by agreement of the parties. Any written mediation agreement shall be signed by both parties and shall be submitted to both parties and the WVDE; and

G. if mediation fails to produce an agreement, or if either party requests termination of the mediation process, the mediator shall issue a statement to the parties and the WVDE that the process has been terminated.

### 8.1.11. Impartial Due Process Hearings.

a. A parent or a public agency may initiate a hearing relevant to the proposal or refusal to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education by submitting a written request for a due process hearing to the WVDE and/or the superintendent of the public agency.

b. The procedures relevant to due process hearings do not apply to students with exceptionalities placed in private schools by the parent for issues regarding the provision of services or the student's services plan. Due process procedures apply to child find, including evaluation and reevaluation.

c. The burden of proof as to the appropriateness of any proposed action, as to why more normalized placement could/could not adequately and appropriately service the individual's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the school personnel recommending the matter in contention.

d. Public agencies shall:

A. provide information to parents, upon request, relevant to submitting written requests for due process hearings and mediation, including the model form for filing

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due process hearings, information regarding free and low cost legal services and attorneys' fees; and

B. forward any written requests received for due process hearings to the WWDE within five (5) days of the date of receipt.

e. The party requesting a hearing, or the attorney representing the party, shall provide notice (which must remain confidential) to the public agency, or to WWDE, in a request for a hearing. The notice must include:

A. The name of the student;

B. The address of the residence of the student;

C. The name of the school the student is attending;

D. A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and

E. A proposed resolution of the problem to the extent known and available to the parents at the time.

f. The party's right to a due process hearing may not be denied or delayed for failure to provide the notice required in paragraph (e) of this section;

g. Not later than 45 calendar days after the Department receives a written request for a due process hearing, the hearing officer will issue a final decision, mailing a copy of the decision to each of the parties. A hearing officer may grant specific extensions of time beyond the timelines at the request of either party;

h. Each hearing involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and student involved;

i. The impartial hearing officer shall preside at the hearing, shall conduct the proceedings in a fair and impartial manner and shall take steps to assure that all hearings will be conducted and completed as quickly as possible;

j. Hearing officers shall have the power to issue subpoenas requiring testimony and/or the production of books, papers, and physical or other evidence. Any person served with a subpoena pursuant to this section may object and ask the hearing officer in writing to quash or modify the subpoena as illegally or improvidently issued. The hearing

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officer shall immediately issue a decision on that validity of the subpoena. Any person served with a subpoena pursuant to this section shall have the right to petition the United States District Court for the county in which the hearing is to be held for an order to quash any subpoena issued pursuant to this section. A hearing officer may petition said court for an order of enforcement of a subpoena issued by the hearing officer. Nothing in this section shall prohibit the hearing officer from refusing to issue subpoenas which are requested for purposes of harassment, abuse of process, delay or which are obviously directed to persons who have no direct evidence in the matter to be heard;

k. At all stages of due process procedures, interpreters for the deaf or interpreters fluent in the primary language of the home shall be provided as needed at public expense;

l. Any party to a hearing has the right to:

A. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the needs of exceptional students;

B. present evidence and confront, cross-examine and compel the attendance of witnesses;

C. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

D. obtain a written or, at the option of parents, electronic, verbatim record of the hearing; and

E. obtain written, or at the option of parents, electronic findings of fact and decisions.

m. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this paragraph from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

n. Parents involved in hearings must be given the right to:

A. have the student who is the subject of the hearing present;

B. open the hearing to the public; and

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C. obtain the record of the hearing and the findings of fact and decisions at no cost.

o. The public agency shall inform parents that reasonable attorney's fees may be awarded to parents of students with disabilities to cover attorneys' fees when the parent of a student with a disability is the prevailing party, subject to certain constraints, and that such attorney's fees may be agreed to by the parties or awarded by a court. IDEA, Part B funds may not be used to pay attorney's fees;

p. A decision made in a hearing is final, unless a party to the hearing appeals the decision through civil action;

q. Any party aggrieved by the findings and decisions made in a hearing has the right to bring a civil action in any state court of competent jurisdiction within 120 days of the date of the issuance of the hearing officer's written decision or in a district court of the United States.

### r. Student Status During Proceedings:

A. Except as provided in procedures for placement in an interim alternative education setting for up to 45 days, during the pendency of any administrative or judicial proceedings, unless the public agency and the parents of the student agree otherwise, the student must remain in the student's present educational placement.

B. If the issue subject to any administrative or judicial proceeding involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

C. If the decision of a hearing officer in a due process hearing agrees with the parents that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parents for purposes of determining the student's current placement during the pendency of subsequent appeals.

### **§126-16-9. Accountability.**

9.1. Policy Statement: Each public agency shall implement federal and state laws, regulations and policies that affect the provision of quality educational opportunities. The State Board of Education promulgates regulations to implement this policy and commits

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the Department of Education to work with public agencies to provide educational services that are student focused, successful and accountable.

### 9.1.1. Responsibilities of the West Virginia Board of Education.

a. The West Virginia Board of Education has primary responsibility for ensuring that educational services are provided to all eligible exceptional students. The general supervision of programs for exceptional students is vested with the West Virginia Board of Education.

b. To accomplish the objectives of serving all eligible exceptional students, it is the responsibility of the State Board to:

A. establish regulations pertaining to the education of all eligible exceptional students in the state;

B. establish standards pertaining to the education of all eligible exceptional students in the state;

C. establish regulations to protect student and parent rights as they pertain to the education of all eligible exceptional students in the state;

D. ensure that eligible exceptional students in the state, including individuals in residential institutions and private schools, receive an education in accordance with state and federal laws;

E. establish certification requirements for personnel providing educational services to eligible exceptional students;

F. approve allocations and disburse state and federal funds designated for the education of eligible exceptional students; and

G. administer education programs, including programs providing special education and related services for exceptional students, in the state's correctional institutions in accordance with applicable state and federal laws and regulations.

### 9.1.2. Responsibilities of the WVDE.

a. The department has a primary leadership role in developing quality educational services for eligible exceptional students in the state, providing guidance in the implementation of State Board of Education policies and regulations governing the

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education of eligible exceptional students, and providing direction and assistance for special education services in the state.

b. It is the responsibility of the department to:

A. assist local educational agencies in the development and modification/adaptation of educational programs of study to meet the needs of exceptional students in early, middle, adolescent and adult education;

B. serve as the advocate for special education in state government;

C. work closely with, and provide staff support to, the West Virginia Advisory Council for the Education of Exceptional Children;

D. perform statewide planning for educational services for eligible exceptional students;

E. develop, provide and participate in programs for the training of educational personnel;

F. disseminate information concerning educational services for exceptional students to interested agencies, organizations and individuals;

G. serve as liaison with other state and regional agencies, parent and professional organizations, and private agencies serving exceptional students;

H. serve as liaison with colleges and universities preparing personnel to work with exceptional students;

I. serve as liaison with federal projects and national agencies which provide services for exceptional students;

J. inform local educational agencies, parents and other agencies of the content and implications of regulations and state and federal laws pertaining to the education of eligible exceptional students;

K. review and/or revise the State Improvement Plan for special education, as required by the U.S. Department of Education;

L. develop the necessary procedures, guidelines, forms and instruments to implement the State Board of Education policies and state and federal laws governing the

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education of exceptional students;

M. monitor the implementation of special education programs for all eligible exceptional students in the state, including students in residential institutions and private schools and incarcerated youth, to assure compliance with federal laws and regulations, state laws, policies, standards and regulations;

N. administer a process for investigating and resolving complaints;

O. initiate enforcement procedures in accordance with the State Improvement Plan, when determined that a public agency has violated these regulations;

P. review public agencies' special education plans and recommend action to the State Superintendent of Schools;

Q. administer the Individuals with Disabilities Education Act funds and monitor programs funded from these monies;

R. maintain reports and summary information on special education in the state;

S. compile and disseminate decisions, opinions and interpretations of the state and federal laws pertaining to education of exceptional students;

T. review and recommend action on certification requests of special education teachers and other agency personnel serving eligible exceptional students;

U. provide direct educational services, including special education and related services for exceptional students, in the state's correctional institutions in accordance with written procedures developed to implement applicable state and federal laws and regulations; and

V. administer the due process hearing system which shall:

(a) provide assistance in alternative means for submitting due process hearing requests in instances where parents are unable to submit written requests;

(b) maintain a list of attorneys trained to serve as hearing officers. The listing shall include a statement of the qualifications of each person. This information shall be provided to each public agency and to any party who requests the information in writing;

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(c) inform parents, when a due process hearing is initiated or if the parent requests the information of the availability of mediation, of any free or low-cost legal and other relevant services available in the area and that new federal legislation allows for the award of attorneys' fees to parents of students with disabilities to cover attorneys' fees and related costs when the parent of a student with a disability is the prevailing party in a due process hearing, subject to certain constraints, and that such attorney's fees may be agreed to by the parties or awarded by a court;

(d) ensure that not later than 45 days after the department receives a written request for a due process hearing:

(A) a final decision is reached in the hearing; and

(B) a copy of the decision is mailed to each of the parties.

(e) transmit findings and decisions from due process hearings, after deleting any personally identifiable information, to the West Virginia Advisory Council for the Education of Exceptional Children and make those findings and decisions available to the public;

(f) provide impartial due process hearing officers who:

(A) meet the following criteria:

1. a law degree;

2. admission to the West Virginia Bar;

3. demonstrated competencies in due process, special education law, effective writing and speaking, decision-making, and related areas, as evidenced through application, interview and competency-based training.

(B) A due process hearing may not be conducted by

1. a person who is an employee of the WVDE or the public agency that is involved in the education or care of the student; or

2. any person having a personal or professional interest that would conflict with objectivity in the hearing; or

3. a school board official; or

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4. a lawyer who represent boards of education or parents in actions against boards of education.

(g) An otherwise qualified individual:

(A) shall be ineligible to begin hearing officer training or to serve as hearing officer during the pendency of any action in which he or she represents boards of education or parents in actions against boards of education and for one year following the conclusion of said representation;

(B) is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(C) Upon receipt of a written request for a due process hearing, WVDE shall select a hearing officer by:

1. using a programmed selection process based upon rotation to select the hearing officer from the roster of qualified hearing officers;

2. making an initial determination whether the selected hearing officer has a personal or professional interest which would conflict with objectivity in the hearing;

3. selecting a new hearing officer if a conflict is determined; and

4. allowing either party to submit a challenge for cause to remove a biased hearing officer. Should a challenge for cause be filed, the state superintendent shall investigate the challenge and determine if cause for removal exists. The decision by the superintendent shall be final and not subject to appeal.

W. administer a state complaint system which shall:

(a) allow for an organization or individual, including from another State, to file a signed written complaint. The complaint must include:

(A) a statement that a public agency has violated a requirement of state or federal law or regulation that applies to Part B of the Individuals with Disabilities Education Act Amendments of 1997 and implementing regulations or West Virginia Code 18-20 and implementing regulations (Policy 2419: Regulations for the Education of Exceptional Students and/or Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data); and

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(B) the facts on which the statement is based.

(b) require the complaint to allege a violation that occurred not more than one year prior to the date that the complaint is received, unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received;

(c) require, upon receipt of the complaint, the WVDE to determine if it is sufficient, that is, meets the requirements of paragraph (a) and shall initiate investigation procedures, or shall notify the complainant in writing that the statement is not sufficient to merit investigation;

(d) require within 60 calendar days of receipt of the complaint, the WVDE to:

(A) conduct an independent on-site investigation, if the WVDE determines such an investigation is necessary. Such determination will be made by the WVDE based on the nature of the allegations, review of information submitted by the public agency and information obtained through telephone interviews;

(B) give the complainant the opportunity to submit additional information, either orally or in writing about the allegations in the complaint;

(C) review all relevant information and make an independent determination as to whether the public agency is violating state or federal special education law or regulations; and

(D) issue a written decision to the complainant and public agency that addresses each allegation in the complaint and contains findings of facts and conclusions and the reasons for the WVDE's final decision. If determined that the public agency violated a federal or state law or regulation, the letter shall include the actions to be taken to correct each identified deficiency including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student and appropriate future provision of services for all students with exceptionalities.

(e) allow for the extension of timelines in (d) only if exceptional circumstances exist with respect to a particular complaint;

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(f) include in the final decision technical assistance activities and negotiations, as appropriate and specific timelines for completing any corrective orders. Timelines will only be extended if requested by the public agency based on exceptional circumstances; and

(g) require, upon receipt of documentation of implementation of corrective orders, the WVDE to determine if the decision has been appropriately implemented. Enforcement sanctions shall be recommended if corrective actions are not appropriately implemented and documented to WVDE within specified timelines;

(h) if a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, allow for the WVDE to set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the timeline and procedures described in paragraphs (a) - (g) of this section;

(i) if an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, allow for the hearing decision to be binding and inform the complainant to that effect;

(j) require that a complaint alleging a public agency's failure to implement a due process hearing decision to be resolved by the WVDE;

(k) require that a complaint alleging that the WVDE or public agency has failed to meet the requirements of Section 6.1.7. to be filed under this section.

X. provide for the participation of private school students with exceptionalities in the program assisted or carried out in accordance with this policy, to the extent consistent with their number and location in the State, by providing them with special education and related services and ensure that a services plan is developed and implemented for each private school student with an exceptionality who has been designated to receive special education and related services.

### 9.1.3. Responsibilities of Local Educational Agencies.

a. Each local educational agency has the responsibility for establishing and maintaining the special education programs and related services needed to provide a free appropriate public education for eligible exceptional students.

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b. Special education programs and services can be provided by any one or more of the following: a single local educational agency; two or more local educational agencies cooperatively; a regional educational service agency (RESA); or contract(s) for services from other public or private agencies or individuals.

c. Each public agency must provide special education and related services to a student with an exceptionality in accordance with an individualized education program. However, Part B of the IDEA does not require any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and objectives. These regulations do not relieve agencies and teachers from making good faith efforts to assist the student in achieving the goals and objectives listed in the IEP, or limit the parents' right to complain and ask for revisions in the student's program, or to invoke due process procedures, if a parent feels these efforts are not being made.

d. Each public agency shall have a system for accessing a parent's public or private insurance to provide or pay for services required to provide a free appropriate public education to an eligible student.

e. It is the responsibility of each public agency to:

A. establish written policy and procedures to implement these regulations and to provide a free public education for eligible exceptional students;

B. provide qualified staff who are appropriately trained and adequate in number to implement these regulations;

C. conduct referral, evaluation, IEP development and placement activities within the timelines specified in these regulations;

D. conduct sweep screening in accordance with WV Code §18-5-17;

E. provide the special equipment, materials and supplies required to implement these regulations and provide the services specified in students' IEPs;

F. provide the assistive technology devices or assistive technology services or both, if specified in students' IEPs as a part of the students' special education, related services or supplementary aids and services;

G. make available to exceptional students the variety of educational programs and services available to non-exceptional students served by the public agency,

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including, but not limited to, art, music, industrial arts, consumer and homemaking education, and vocational education;

H. make available physical education services, specially designed if necessary, to every exceptional student, including students enrolled in separate facilities;

I. provide specially designed vocational education, as needed;

J. provide non-academic and extracurricular services and activities in such a manner as is necessary to afford exceptional students an equal opportunity for participation in those services and activities;

K. provide the opportunity for eligible exceptional students to earn the required credits for graduation;

L. make available special education and related services to meet the needs of private school students with exceptionalities in the jurisdiction of the agency, including consulting with appropriate private school representatives on how to locate, identify and evaluate all private school students with exceptionalities;

M. make available a continuum of alternative placements to meet the needs of students with exceptionalities for special education and related services. The continuum must include instruction in regular classes, special classes, special schools, the home, hospitals and institutions, and make provisions for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;

N. conduct hearing aid monitoring in accordance with established procedures to assure that hearing aids worn by students in schools are functioning properly;

O. provide eligible exceptional students an instructional day and school calendar at least equivalent to that established for non-exceptional students of the same chronological age in the same setting;

P. provide classrooms to eligible school age exceptional students in close proximity to classrooms for age appropriate non-exceptional peers;

Q. provide services for eligible exceptional students in school and/or community settings that serve age appropriate non-exceptional peers;

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R. provide classrooms for eligible exceptional students that are adequate, and that are comparable to the classrooms for non-exceptional students;

S. provide classrooms/facilities for eligible exceptional students with physical and/or sensory impairments that are in compliance, to the extent necessary, with the requirements of the Americans with Disabilities Act, the Rehabilitation Act of 1973, Section 504, the specifications outlined in West Virginia Code, Chapter 18, Article 10F, and the current Uniform Federal Accessibility Standards;

T. provide transportation, specially designed if necessary, for all students with exceptionalities in accordance with West Virginia Code 18-5-13 and State Board of Education policies governing transportation;

U. collect and maintain current and accurate student data for planning the delivery of a free appropriate public education and report data as required;

V. collect, maintain and disclose personally identifiable student data in accordance with state and federal confidentiality requirements;

W. conduct ongoing program evaluation to evaluate and improve the effectiveness of services provided to eligible exceptional students;

X. monitor the compliance with the regulations of agencies, organizations, or individuals who provide contractual special education and/or related services;

Y. inform other agencies, organizations, or individuals of the state and federal requirements pertaining to the education of exceptional students; and

Z. establish policies and procedures which include a practical method for determining which students are receiving needed special education and related services and which students are not currently receiving special education and related services.

### 126-16-10. Glossary.

10.1. Acceleration - Moving through a prescribed course of study at a faster or earlier rate. Acceleration includes, but is not limited to: compacted classes/schedules, testing out, advanced placement (if college credit is earned), fast-paced curriculum and high school credit for college classes.

10.2. Adaptive P.E. - regular physical education which has been modified, or adapted, so that a student with a disability can participate in the regular physical education program.

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Modifications may include, but are not limited to, instructional adaptations and/or modified or specialized equipment.

10.3. Adaptive Skills - those skills necessary to function adequately within a person's present environment. These skill areas are: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

10.4. Adolescent Education - the educational program that addresses the intellectual, physical, social/emotional and transition needs of learners aged 14 through 21 for special education across all programs and areas of study in grades 9-12.

10.5. Adult Education - the educational program that addresses the intellectual, physical, social/emotional and occupational needs of persons 16 years old and older who presently are not enrolled in a public school.

10.6. Adversely Affects - interferes with the student's educational performance to the extent that the student is unable to achieve in the regular education program within the range of functioning of the student's non-exceptional chronological age peers.

10.7. Age-Appropriate - the term applies to peers of similar chronological ages or settings in which non-exceptional peers of similar chronological ages are served.

10.8. Annual Goal - are measurable statements developed from the present levels of educational performance that project what an exceptional student can reasonably be expected to accomplish within a 12 month period. For students with exceptionalities, annual goals must relate to helping students be involved in and progress in the general curriculum. For students with disabilities, annual goals will also address other educational needs that arise due to the student's disability and help them participate in extracurricular and nonacademic activities.

10.9. Assistive Technology Device - any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of students with disabilities.

10.10. Assistive Technology Service - any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: a) the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment; b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities; c) selecting, designing, fitting, customizing, adapting,

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applying, maintaining, repairing, or replacing of assistive technology devices; d) coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; e) training or technical assistance for a student with a disability or, if appropriate, that student's family; and f) training or technical assistance for professionals, (including individuals providing education or rehabilitation services) employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student with a disability.

10.11. Audiology - includes: a) identification of children with hearing loss; b) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; c) provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; d) creation and administration of programs for prevention of hearing loss; e) counseling and guidance of pupils, parents, and teachers regarding hearing loss; and f) an appropriate aid, and evaluating the effectiveness of amplification.

10.12. Business day - means Monday through Friday, except for Federal and State holidays, (unless holidays are specifically included in the designation of business day).

10.13. Caseload - the maximum number of students for whom a special education teacher has primary responsibility for the provision of special education consultative and/or direct instructional services.

10.14. Communication - includes the ability to comprehend and express information through symbolic behaviors (e.g., facial expression, body movement, touch, gesture). Specific examples include the ability to comprehend and/or receive a request, an emotion, a greeting, a comment, a protest, or rejection. Higher level skills of communication (e.g., writing a letter) would also relate to functional academics.

10.15. Community-Settings - community environment(s) in which the student will be expected to use/apply the skills or behaviors that are being learned.

10.16. Community Use - refers to the appropriate use of community resources. This includes traveling in the community, shopping for groceries and other items, purchasing or obtaining services from community businesses (e.g., gas stations, repair shops, doctor's offices), attending places of worship, using public transportation, and using public facilities (e.g., schools, parks, libraries, recreational centers, streets, sidewalks, theaters). Related skills include appropriate behavior in the community, indicating choices and needs, social interaction, and the application of functional academics.

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10.17. Confidentiality - the protection of all personally identifiable data, information and records collected or maintained by any agency or institution under the general supervision of the West Virginia Board of Education.

10.18. Consent - a) the "parent" has been fully informed of information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; b) the "parent" understands and agrees in writing to the carrying out of the activity for which her or his consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and c) the "parent" understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

10.19. Consultative Services - assistance provided to a student's teacher(s) or other service providers for the benefit of an eligible exceptional student. Consultative services include, but are not limited to, selecting/designing/modifying materials, instructional strategies, management plans and evaluation procedures, and monitoring/evaluating student progress on short-term instructional objectives.

10.20. Continuum of Alternative Placements - a range of settings in which eligible exceptional students receive special education and related services.

10.21. Controlled Substance - a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812 (c)).

10.22. Critical Skills - the cognitive, physical, communication, and/or social/emotional abilities needed for the student to maintain current levels of performance.

10.23. Counseling Services - services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

10.24. Day - means calendar day unless otherwise indicated as school day or business day.

10.25. Deadly Weapon - An instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" shall include, but not be limited to the instruments defined in subdivisions (1) through (8) of §61-7-2 of the West Virginia Code, or other deadly weapons of this kind or character which may be easily concealed on or about the person. The federal term "dangerous weapon" is the same as this term.

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10.26. Destruction - physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

10.27. Direct Services - instruction, therapy or interventions provided one-on-one or in groups to an eligible exceptional student in school, home or community settings.

10.28. Due Process - a system that guarantees each individual equal protection and treatment under the 14th Amendment of the Constitution.

10.29. Early Childhood Education - the educational program that addresses the intellectual, physical, and social/emotional needs of learners age three through ten, across all programs and areas of study in grades PreK-4.

10.30. Early Identification and Assessment - the implementation of a formal plan for identifying a disability as early as possible in a child's life.

10.31. Education Records - those records which are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution.

10.32. Educational Performance - a student's functioning (or performance) relative to age/grade performance in programs of study, basic communication skills, social interaction and emotional development within the school and/or community environments.

10.33. Educational Service Agency - means a regional public multi-service agency: a) authorized by State law to develop, manage and provide services or programs to local educational agencies; b) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and c) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

10.34. Eligible Exceptional Students - those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained in this document, have been determined to be: a) autistic, behavior disordered, blind and partially sighted, speech/language impaired, deaf-blind, deaf and hard of hearing, gifted, exceptional gifted (grades 9-12) mentally impaired, orthopedically impaired, other health impaired, preschool special needs, specific learning disabled, traumatically brain injured, and b) in need of specially designed instruction.

10.35. Eligible Students with Disabilities - those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained within this

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document have been determined to be: a) autistic, behavior disordered, blind and partially sighted, speech/language impaired, deaf-blind, deaf and hard of hearing, mentally impaired, orthopedically impaired, other health impaired, preschool special needs, specific learning disabled, traumatically brain injured, and b) in need of specially designed instruction.

10.36. Equipment - means a) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and b) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

10.37. Evaluation - procedures used in accordance with the protection in evaluation requirements of the Individuals with Disabilities Education Act (IDEA) to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

10.38. Executive Skills - those functions which enable a person to plan, sequence and self-monitor multi-step activities and engage in organized, purposeful behavior.

10.39. Extended School Year Services - special education and related services that are provided to a student with a disability beyond the normal school year of the public agency, in accordance with the student's IEP, and at no cost to the parents of the student; and that meet the standards of the state educational agency.

10.40. Firearm - Any weapon which will expel a projectile by action of an explosion.

10.41. Free Appropriate Public Education (FAPE) - special education and related services which: a) are provided at public expense, under public supervision and direction, and without charge to the parent; b) meet the standards of the state education agency, including the requirements of these regulations; c) include preschool, elementary school or secondary school education in the State, and d) are provided in conformity with an Individualized Education Program.

10.42. Functional Academics - functional academics refer to cognitive abilities and skills related to learning at school. Writing, reading, basic practical math concepts, basic science as it relates to the awareness of the physical environment and one's health and

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sexuality, geography, and social studies are included. The focus is not on grade-level academic achievement but on the acquisition of academic skills that are functional in terms of independent living.

10.43. Functional Behavioral Assessment - a process in which informed hypothesis statements are developed about the relationships between events in the environment and the occurrence of a student's behavior.

10.44. General Curriculum - the curriculum adopted by a local educational agency, schools within the local educational agency, or where applicable, the state education agency for all students from preschool through secondary school. In these regulations, the term means the Instructional Goals and Objectives for West Virginia Schools.

10.45. General Intellectual Functioning - acquired learning and learning potential as measured by a systematic evaluation with one or more of the individually administered general intelligence tests or procedures.

10.46. Health and Safety - maintaining one's own well being; appropriate diet; illness identification, treatment, and prevention; basic first aid; sexuality; physical fitness; basic safety (e.g., following rules and laws, using seat belts, crossing streets, interacting with strangers; seeking assistance), regular physical and dental check-ups, and daily habits. Related skills include protecting oneself from criminal behavior, indicating choices and needs, interacting socially, and applying functional academics.

10.47. Historically Under-represented Gifted Population - Those students who have a disability in accordance with this policy, economically disadvantaged, African American and/or are Hispanic.

10.48. Home Living - daily functioning within a home; housekeeping, clothing care, property maintenance, food preparation, planning and budgeting for shopping, home safety, and daily scheduling. Related skills include orientation, behavior in the home and neighborhood, communication of choices and needs, social interaction, and application of functional academics in the home.

10.49. Illegal Drug - is a controlled substance; but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal Law.

10.50. Independent Educational Evaluation - an evaluation conducted by a qualified evaluator who is not employed by the public agency responsible for the education of the

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student in question, and who is selected by the party seeking the independent evaluation.

10.51. Individualized Education Program (IEP) - a written plan for an eligible exceptional student that is developed, reviewed and revised in a meeting by educators, parents and related service personnel.

10.52. Individualized Education Program Team or IEP Team - a group of individuals described in regulations that is responsible for developing, reviewing or revising an IEP for an eligible exceptional student.

10.53. Individualized Family Service Plan or IFSP - a written plan for providing early intervention services to a child and the child's family.

10.54. Least Restrictive Environment - the educational placement which provides the services/conditions necessary to meet the unique educational and behavioral needs of the student, while providing the student with integration to the maximum extent appropriate with non-exceptional peers.

10.55. Leisure - a variety of leisure and recreational interests that reflect personal preferences and choices. Public activities should reflect age and cultural norms. Skills include choosing and initiating activities, using and enjoying home and community leisure and recreational activities along and with others, playing socially with others, taking turns, choosing not to participate in leisure activities, participating longer, and expanding one's awareness and repertoire of interests and skills. Related skills include behavior in the leisure and recreation setting, indicating choices and needs, social interaction, application of functional academics and mobility.

10.56. Local Educational Agency (LEA) - a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes: a) an educational service agency, as defined in these regulations; and b) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

10.57. Mediation - an informal, non-adversarial and voluntary process in which the parties involved in a dispute are given an opportunity through an impartial third party, called a mediator, to resolve their differences and find a solution satisfactory to the parties involved.

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10.58. **Medical Services** - services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

10.59. **Meeting** - a meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if these issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

10.60. **Middle Childhood Education** - the educational program that addresses the intellectual, physical, and social/emotional needs of learners aged 10 through 14 across all programs in areas of study in grades 5-8.

10.61. **Multidisciplinary Evaluation** - comprehensive procedures used to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The term means procedures that are conducted by a team of individuals representing a variety of disciplines. These procedures are used selectively with an individual student and do not include basic tests administered to or procedures used with all students in a school, grade or class.

10.62. **Multidisciplinary Evaluation Team** - a group of qualified personnel representing a variety of disciplines which determines the areas to be evaluated and conducts the multidisciplinary evaluation.

10.63. **Native Language** - a) if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student; b) in all direct contact with a student (including evaluation of the child), the language normally used by the student in the home or learning environment; or c) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the student (such as sign language, braille or oral communication).

10.64. **Non-academic Services** - non-academic and extracurricular services and activities are those provided by the local educational agency in addition to the required and elective programs of study. The term includes counseling, athletics, transportation, health services, recreational activities, special interest clubs or groups sponsored by the public agency, referrals to agencies which provide assistance, and employment of students, including both employment by the public agency and assistance in making outside employment available.

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10.65. Non-aversive Behavioral Strategies - strategies that are employed to change or maintain behavior without the application of a noxious or painful stimulus or the use of a strategy that results in severe physical/ emotional stress/discomfort or the prolonged deprivation of movement or basic biological needs.

10.66. Normal Rate or Level of Development - the average rate or level of developmental functioning as exhibited by students of the same chronological age. Rates or levels of development are indicated by age-equivalency measures such as developmental age, mental age, developmental quotient, intelligence quotient, standard scores and percentile and are dependent upon the type of evaluation instrument used.

10.67. Objective Criteria - standards established to determine whether a student is learning or has achieved a skill and if instruction is effective.

10.68. Occupational Therapy - services provided by a qualified occupational therapist, which include: a) improving, developing or restoring functions impaired or lost through illness, injury or deprivation; b) improving ability to perform tasks for independent functioning if functions are impaired or lost; and c) preventing, through early intervention, initial or further impairment or loss of function.

10.69. Orientation and Mobility - services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, including: a) teaching students spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street); b) teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; c) teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and d) other concepts, techniques, and tools, as determined appropriate.

10.70. Out-of-State Placement - the placement of a student with disabilities in a school/facility located outside of the state for special education and related services.

10.71. Parent - a parent, a guardian, a person acting as a parent of a child (e.g., grandparent, stepparent with whom a child lives, persons who are legally responsible for a child's welfare and, at the direction of the State, a foster parent who meets the requirements in this definition) or a surrogate parent who has been appointed in accordance with state and federal requirements. The term does not include the state, if

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a child is a ward of the state. State law may provide that a foster parent qualifies as a parent under IDEA 97 and this policy if: a) the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; b) the foster parent has an ongoing, long-term parental relationship with the child; c) the foster parent is willing to participate in making educational decisions on the child's behalf; and d) the foster parent has no interest that would conflict with the interests of the child.

10.72. Parental Consent - see Consent.

10.73. Parent Counseling and Training - assisting parents in understanding the special needs of their child, providing parents with information about child development and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

10.74. Parent Training - activities to improve the parents' understanding of child development, the specific educational needs of their exceptional child, procedural safeguards and surrogate responsibilities. The term includes the training of parents in specific skills relating to the management or education of the child while at home.

10.75. Participating Agency - a state or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing services to the student.

10.76. Personally Identifiable- information that includes: a) the name of the student, the student's parent, or other family member; b) the address of the student; c) a personal identifier, such as the student's social security number or student number; or d) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

10.77. Physical Education - the development of: a) physical and motor fitness; b) fundamental motor skills and patterns; and c) skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

10.78. Physical Therapy - services provided by a qualified physical therapist.

10.79. Placement - the setting in which the eligible exceptional student receives special education and related services. For students ages 6-12, these settings are: Regular Education: Full-Time, Regular Education: Part-Time, Special Education: Separate Class, Special Education: Special School, Special Education: Out-of-School Environment and

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Special Education: Residential Facility. For students ages 3-5, these settings are: Home, Early Childhood Setting, Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting, Reverse Mainstreaming, Early Childhood Special Education Setting, and Itinerant Services Outside the Home.

10.80. Present Levels of Educational Performance - are specific statements that describe the effect of the student's exceptionality on his/her educational performance, including how the student's exceptionality affects the student's involvement and progress in the general education curriculum; or for preschool children, how the exceptionality affects the child's participation in age-relevant developmental activities. Present levels of educational performance statements are written in objective measurable terms, to the extent possible, using relevant information such as recent evaluation reports, statewide testing results, current progress data and parent information.

10.81. Private/Religious School - an educational facility operated by a non-public agency or organization.

10.82. Procedure - any written course of action set forth to implement federal, state, and local policy which includes: a) a description of the actions to be undertaken; b) the criteria or standards to be used when decisions are required; c) the person(s) responsible for such actions, and d) the timelines for completion. Written procedures shall describe actions in terms which are both measurable and operational.

10.83. Procedural Safeguards - the due process protections afforded in the implementation of the West Virginia special education process.

10.84. Psychological Services - includes: a) administering psychological and educational tests, and other assessment procedures; b) interpreting assessment results; c) obtaining, integrating and interpreting information about child behavior and conditions relating to learning; d) consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests; e) planning and managing a program of psychological counseling for children and parents; and f) assisting in developing positive behavioral intervention strategies.

10.85. Program of Study - a K-12 curricular sequence which constitutes the subject matter to be offered in the public schools of West Virginia, e.g., reading, mathematics, social studies, vocational education, business education.

10.86. Public Agency - state educational agency, regional educational agency, local educational agency, and any other political subdivisions of the state which are responsible for providing education to exceptional students.

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10.87. **Public Expense** - the public agency either pays for the full cost of the service or ensures that the service is otherwise provided at no cost to the parent.

10.88. **Qualified Personnel** - a person who has met state educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

10.89. **Recreation** - includes: a) assessment of leisure function; b) therapeutic recreation services; c) recreation programs in schools and community agencies; and d) leisure education.

10.90. **Regression/Recoupment** - the loss of acquired skills and the inability to relearn those skills in a specified amount of time.

10.91. **Regression Formula** - a commonly used statistical procedure that provides an achievement range for a specific intelligence quotient. This method adjusts for the phenomenon of regression toward the mean, a statistical tendency for scores that are especially high or low to move toward the mean when measured a second time.

10.92. **Regular Education Program** - an educational program designed to meet the needs of all students in preschool, early childhood, middle childhood, adolescent, or adult education. Instruction in a regular education program includes community based, general and/or vocational education.

10.93. **Rehabilitation Counseling Services** - services provided by a qualified rehabilitation counseling professional, in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with exceptionalities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

10.94. **Related Services** - transportation and such developmental, corrective and other supportive services as are required to assist an eligible exceptional student to benefit from special education. The term includes, but is not limited to, assistive technology, audiology, speech and language pathology, psychological services, physical and occupational therapy, clean intermittent catheterization (CIC), recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, social work services in schools, school health services, early identification and evaluation of disabling conditions in students, medical services for diagnostic or evaluative purposes only, and parent counseling and training.

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10.95. Removal - exclusion of the student from school as a disciplinary action for a specified period of time.

10.96. School day - means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without exceptionalities.

10.97. School Team - a team within a school whose major functions are to provide necessary assistance to any students within the regular classroom, and to identify and refer students for evaluation, when necessary.

10.98. School Health Services - services provided by licensed school nurses and other health care providers to identify health problems that interfere with learning and to promote a level of health which permits maximum utilization of educational opportunities.

10.99. Secondary School - a nonprofit institutional day or residential school that provides secondary education, as determined under State Law, except that it does not include any education beyond grade 12.

10.100. Self-Care - skills involving eating, dressing, grooming, toileting, and hygiene.

10.101. Self-Direction - making choices. Self-direction includes learning and following a schedule; initiating appropriate activities consistent with one's personal interests; completing necessary or required tasks; seeking assistance when needed; resolving problems in familiar and new situations; and demonstrating appropriate assertiveness and self-advocacy.

10.102. Serious Misconduct - Any activity for which suspension or expulsion is a punishment for regular education students. These activities include: 1) assault/battery on school employees (West Virginia Code §61-2-15); 2) possession of a deadly weapon (West Virginia Code §61-7-11a); 3) selling a narcotic drug on the premises of an educational facility, at a school sponsored function, or on a school bus (West Virginia Code §60A-1-101); 4) committing an act or engaging in conduct that would constitute a felony under the laws of this state if committed by an adult; 5) unlawfully possessing on the premises of an educational facility or at a school sponsored function, a controlled substance governed by the Uniformed Controlled Substance Act; 6) threatening to injure, or in any manner injuring, a pupil, teacher, administrator, or other school personnel; 7) willfully disobeying a teacher; 8) possessing alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; 9) using profane language directed at a school employee or pupil; 10) intentionally defacing any school property; 11)

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participating in any physical altercation with another person while under the authority of school personnel; 12) habitually violating school rules or policies.

10.103. Services Plan - a written statement of the special education and related services to be provided by the public agency to a private school student with an exceptionality placed by a parent.

10.104. Short-term Instructional Objectives - measurable, intermediate steps between a student's present levels of educational performance and the annual goals. Objectives are based on a logical breakdown of the major components of the annual goals.

10.105. Significantly Sub-average Intelligence - is an IQ standard score of approximately 70 to 75 on scales with a mean of 100 and standard deviation of 15 based on assessment that includes one or more individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

10.106. Social Skills - social skills refer to appropriate and inappropriate social behavior. Appropriate social behavior includes behaviors such as making friends; showing appreciation; smiling; taking turns; cooperating with others; demonstrating honesty; trustworthiness; and appropriate play; showing concern for others; displaying empathy; and being fair. Inappropriate behavior includes behaviors such as tantrums, jealousy, fighting others, overstaying a welcome, being overly demanding, constantly needing reassurance; and being non-assertive.

10.107. Social Work Services in Schools - services that include: a) preparing a social or developmental history on a student with a disability; b) group and individual counseling with the student and family; c) working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and d) mobilizing school and community resources to enable the student learn as effectively as possible in her or his educational program, and assisting in developing positive behavior intervention strategies.

10.108. Special Education - specially designed instruction, at no cost to parents, to meet the unique educational needs of an eligible exceptional student, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes speech-language pathology services, or any other related service, if the service consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a student with an exceptionality, and is considered special education rather than a related service under State standards. The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with

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an exceptionality.

10.109. Special Transportation - modifications made in regular school transportation to assure accessibility of special education and other related services for students with disabilities. Special transportation includes special equipment (such as special or adaptive buses, lifts, and ramps), and special care (such as need for health and safety maintenance, assistance of aide, medication in transit and/or positioning), if required to provide school transportation for a student with an disability.

10.110. Specially Designed Instruction - is adapting content, methodology or delivery of instruction; a) to address the unique needs of an eligible student under this part that result from the student's exceptionality; and b) to ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all students.

10.111. Speech-Language Pathology Services - include: a) identification of children with speech or language impairments; b) diagnosis and appraisal of specific speech or language impairments; c) referral for medical or other professional attention necessary for the habilitation of speech or language impairments; d) provision of speech and language services for the habilitation or prevention of communicative impairments; and e) counseling and guidance of parents, children and teachers regarding speech and language impairments.

10.112. Standard Deviation - a statistic used to express the distance on the average of scores from the mean of the distribution. The standard deviation shows the variability of a series or group of scores or numbers.

10.113. Standard Error of Measurement - an indicator that allows a student's performance to be reported as a range of scores where it is highly probable the true score lies.

10.114. Supplementary Aids - any material/curricular resource or assistance, beyond what is normally afforded non- exceptional students, provided to support an exceptional student's placement. Supplementary aids may include, but are not limited to, large print books, assistive technology devices, auditory trainers, curriculum adaptations and classroom modifications or aids, services and other supports that are provided in regular education classes or other education related settings to enable students with exceptionalities to be educated with non-exceptional students to the maximum extent appropriate.

10.115. Supplementary Services - any human resource or assistance, beyond what

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is normally afforded non-exceptional students, provided to support an exceptional student's placement, such as direct instruction, peer tutoring, interpreting, and note taking.

10.116. Supported Employment - paid work in the regular community work environment where persons without disabilities are employed. Individuals with disabilities are included in the work setting and receive initial training and on-going support services in the natural community work environment.

10.117. Suspension - removal of a student from school as a disciplinary action for misconduct.

10.118. Sweep Screening - the utilization of screening tests, instruments or procedures with designated groups of students to locate individuals who manifest, or are likely to manifest, attributes or behaviors which require special education.

10.119. Transition Services - a coordinated set of activities for a student with a disability, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including, but not limited to, post-secondary education, vocational training, integrated employment including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

10.120. Transportation - the term includes: a) travel to and from school and between schools; b) travel in and around school buildings; and c) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

10.121. Travel Training - means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that environment (e.g. in school, the home and the community).

10.122. Vocational Education - organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

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10.123. *Work* - holding a part- or full time job (supported or non-supported) or participating in a voluntary activity in the community. Related skills include specific job competencies, appropriate social behavior, appropriate work skills (e.g., completion of tasks, awareness of schedules, ability to seek assistance, take criticism), money management, the application of other functional academic skills, and skills related to going to and from work, preparing for work, managing oneself at work, and interacting appropriately with co-workers.

## FISCAL NOTE WORKSHEET

(Submit 4 Copies)

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 2419: Regulations for the Education of Exceptional Students FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

INCOME ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

**SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT**

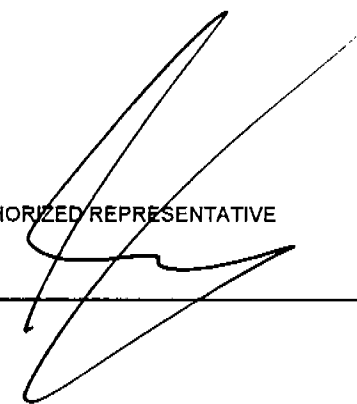
EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

These regulations reflect changes to federal statute, the Individuals with Disabilities Education Act Amendments of 1997, and the Code of Federal Regulations Parts 300 - 303. No increase or decrease in total costs is anticipated in order to implement the changes in federal statute and regulations.

DATE  
April 21, 1999

AGENCY  
West Virginia Department of Education

AUTHORIZED REPRESENTATIVE  


## **COMMENT LOG SUMMARY**

### **Policy 2419: Regulations for the Education of Exceptional Students**

During the comment period 69 individuals and 10 organizations or groups of individuals submitted a total of 491 comments or suggestions. The organizations included the West Virginia Federation of Teachers, West Virginia School Service Personnel Association, West Virginia Advisory Council for the Education of Exceptional Children, Monongalia County Association for Enrichment, and the West Virginia Parent Training and Information.

Although a number of comments were not in support of specific proposed revisions in Policy 2419, most of these negative comments were “Not Accepted”. Generally, the comments that are noted as “Not Accepted” were contrary to or in conflict with the language and provisions of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA 97) or West Virginia Code. Other comments were “Not Accepted” because they suggested adding language that would exceed the federal requirements or they were applicable to the implementation of the policy or staff development on its provisions, rather than the content of the proposed policy revisions.

Several minor wording and editorial changes were made for clarity based upon submitted comments. In the areas of caseloads and preschool special needs, more substantive suggested changes were “Accepted” and recommend for incorporation into Policy 2419.

The changes to Policy 2419 related to services for preschool children with special needs were made, based upon the comment period, to reflect more closely the federal requirements for Part C: The Early Intervention Program for Infants and Toddlers with Disabilities. Part C applies to public schools. Also, the terminology for reporting data on the least restrictive environment (LRE) placement options for preschool children with disabilities was included.

Also, changes in the proposed method of determining caseloads were, also, made based upon the comment period. Several school districts submitted data and suggested that caseloads be determined based upon a three (3) point weighted scale, rather than a five (5) point weighted scale as originally proposed. Based upon the submitted data, it is recommended that the three (3) point weighted scale be adopted. The three (3) point scale reflects current practice and staffing.

July 15, 1999 State Board Meeting

**Policy 2419: Regulations for the Education of Exceptional Students  
COMMENT LOG**

*May 13, 1999 to June 25, 1999*

**ACTION**  
 N: No Response  
 NA: Not Accepted  
 A: Accepted

**TYPE**  
 - Negative  
 + Positive  
 0 Neutral

Date	Individual / Organization	Comments	Type/ Action	Rationale
<b>§126-16-1 General</b>				
6/7/99	Elaine S. Max Jackson County Schools	Typos on: Page 27: D. ... cites (D) above - should it be C?  Page 29: A.... programs of study  Page 67: f. ... implement the mediation ... (t left out)	O A  O A  O A	Typos were present
6/9/99	Gary Cross, Principal Ravenswood Elementary	A major concern is the length and time to complete the regulation requirements in Policy 2419. We have had many parents complain about this process. Too much paper work.	-	N
6/9/99	Jennifer Weekley Ritchie County Schools	1.65-Students who have been suspended or expelled from school do not deserve to receive a public education which "meets their needs." If they are expelled and still receive benefits such as a home-bound teacher who brings all work to their doorstep- who wouldn't want this? Everyone would love to have an education "at their convenience" and delivered to their home. They can sleep in!	-	NA  Federal requirement

Date	Individual / Organization	Comments	Type/ Action	Rationale
<p>6/8/99 6/9/99 6/9/99 6/10/99 6/10/99</p>	<p>WV Federation of Teachers Rosemary Jenkins Perry West John O'Neal Bernie Hurst Kenny Stultz</p>	<p>The WVFT has a great concern about the lack of time provided for input to such major revisions. Additionally, the comment period comes at a time when teachers are away from their schools; consequently, out of touch with county and state communications. According to a correspondence from the office of special education, copies of the proposed policy 2419 were mailed on May 17<sup>th</sup> to faculty senate chairs at each school in the state. WVFT did random calling to faculty senate chairs in several different counties and could not find one faculty senate chair that was aware of the policy changes, much less find one person that received a copy of the policy. WVFT received a copy of the document on May 26, 1999. Equally disturbing is that on June 25<sup>th</sup> less than 60 days, ends the public comment period. The WVFT understands the department's need to have some revisions in place with the coming school year as a result of the revised requirements in <u>IDEA97</u>. On the other hand, we are baffled as to why the department is allowing so little time for input. Particularly the section concerning caseloads, as this section will not become effective until July 1, 2000.</p>	<p>O N</p>	
<p>6/16/99</p>	<p>Lisa Martin Dir. of Spec. Ed. Jackson County Schools</p>	<p>Requirements applicable to the administration of special education and related services that are addressed in other state board policies such as Policy 2510 are not mentioned in Policy 2419. Examples include: the awarding of a modified diploma, implementation of a functional curriculum, state/county testing requirements including alternate assessment, and opportunity to examine records. All regulations relevant to the administration and provision of special education should be either included in state board policy 2419 or referenced in the appendix as in the previous policy.</p>	<p>- NA</p>	<p>Consider recommendation for future TA document</p>
<p>6/24/99</p>	<p>Kanawha County Schools</p>	<p>p. 2 - Keep the statement: "including students w/ disabilities who have been suspended or expelled from school in FAPE.  P. 2 1.6 - Reconsider this!</p>	<p>+ N  - NA</p>	<p>Federal requirement</p>
<p>6/25/99</p>	<p>Kanawha County Schools</p>	<p>Reword 1.1 last sentence to read. "unless the student has met graduation requirements as specified by the IEP for a modified diploma or state/local policy pertaining to graduation requirements for students receiving a standard diploma".</p>	<p>- NA</p>	<p>Not a proposed change</p>

Date	Individual/ Organization	Comments	Type/ Action	Rationale
6/25/99	Ginger Huffman Office of Special Education	<p>1.1 Add a sentence regarding the fact that the local education agency can accept two year old children with special needs early in the year if children are transitioning from Part C. It may state these apply to three year olds, as of their third birthday, or two year olds as part of transition process for preschoolers from Part C programs.</p> <p>1.1.2.b. What does receiving programs and services inappropriate to meet their needs mean? A definition may be helpful here</p>	- NA	Addressed in §126-16-4, 4.1.3j
6/25/99	Pamela Kohner Sp. Ed. Director Wirt County Schools	<p>1.1 Scope. The exit age of "21 years of age prior to September 1 of such school year" needs to be made known.... For example, a student turning 21 on June 14, 1999 would remain eligible for services during the 1999-2000 school year. This was the only place exit was addressed.</p> <p>A section on exit criteria &amp; procedures needs to be added.</p> <p>1.1.2.b. Define "receiving programs and services inappropriate to meet their needs"</p>	O N	Not a proposed change
6/25/99	Mike Sullivan, Exec. Dir. WVACEEC	<p>User Friendliness - Council feels that the revised format will be more difficult for consumers of Special Education services to use. Perhaps using more "bold" fonts to indicate major sections would help.</p>	- NA	Not a federal requirement
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	<p>Language is more understandable than previous. Inclusion is stressed which is so positive.</p> <p>How does a parent obtain a copy of the local public agency's policies? Brochure should include this.</p>	+ N	Not a proposed change
6/25/99	Patricia Schaeffer, Parent	Please return gifted services for <u>all</u> gifted students at the high school level.	- NA	Secretary of State requirement
6/25/99	David Gaudino, Teacher Marshall County Schools	As a member of the task force that reviewed the gifted sections of Policy 2419 I was surprised with the changes in this document that were not discussed at any of our meetings. In a time when gifted children are having more and more needs-especially in the affective domain this document seems to further cut gifted services especially in the affective domain. The increase in suicides among gifted children and the school shootings, conducted by many may unhappy gifted children provide evidence that gifted children need service beyond the four basic subjects and including services beyond just honors classes and accelerated classes for grades 9-12.	O N	W V Code requirement

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Gerry Sokol, Dir. of Sp. Ed. Jefferson County Schools	Make the document easier to read - too many capital and small letters to follow.	- NA	Secretary of State requirement
6/25/99	WV Parent Training and Information	<p>Even though format is SBE, it's difficult to follow and is not user friendly for the targeted audience.</p> <p>Needs a topical index.</p> <p>Comment period is untimely and will not produce needed results (i.e. teacher/personnel not in buildings to receive copies, PERC's can't disseminate to families, etc.)</p> <p>List of resources dropped, need put back and parents need ready access to resources. Most do not even know about laws and policies, so they wouldn't even know what to request or how to get them if they listed them in "some other document". Granted, Policy 2419 is formatted and aligned with the Federal Statute' however we in West Virginia have a very different population that we serve and Policy 2419 should address the needs of West Virginia. We've received many questions about the funding formula, but have nothing to provide to anyone.</p>	<p>- NA</p> <p>- NA</p> <p>O N</p> <p>- NA</p>	<p>Secretary of State requirement</p> <p>Not the prescribed format</p> <p>Not the prescribed format Implementation issue</p>
6/25/99	Connie Matthews, Parent	<p>1.5 Right to A Free Appropriate Public Education. The statement in Policy 2419 violates 34 CFR 300.121 Individuals with disabilities are between three through age 21. WVDE has this stated as the right ends at age 21. The legal right ends with the 22<sup>nd</sup> birthday.</p>	- NA	Federal requirements Follows W V Code.
6/25/99	Susan Barnes Sp. Ed. Coordinator RESA I	p. 2 Underlined: including...this phrase is unnecessary - all students entitled to FAPE	- NA	Federal language

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/9/99	Jennifer Weekley Ritchie County Schools	<p>§126-16-2 Identification Referral</p> <p>I see no problem with this section.</p>	+ N	
6/9/99	Gary Cross, Principal Ravenswood Elementary	<p>Cumbersome &amp; burdensome - too long of a process. When a person is referred, the student has had numerous interventions, instructional methods of numerous ways have already been tried and teachers feel something needs to be done immediately.</p>	- NA	Federal requirement
6/25/99	Gerry Sokol Dir. of Spec. Ed. Jefferson County Schools	<p>pg. 3, 2.1 - Wording appears to be unclear since everyone who moves from grade to grade is supposed to have mastered WV IGO's. We would like clarification of the following terms "even though advancing grade to grade.... also. The item seems to refer to all as mentioned in the 21 line of 2.1, but the last line on page 3 indicated that provide, regulations, and highly mobile students are the ones refer to.</p> <p>P. 5, 3.1.2 E. The parentheses around physically disabled imply that the orthopedically impaired, other health impaired, and traumatic brain injured are physically disabled which they are not. Remove the parentheses and use commas. Also, it implies that an MD must be at the meeting when, in fact, the MD's written report or record could serve the same purpose.</p> <p>P. 7 C the term "may conduct its review without a meeting" is unclear and indicates that one may carry on an evaluation and subsequent review without others.</p> <p>B. (at the bottom of the page) "When the student is suspected of having only..." At this point there is no IEP team, because the child has not yet been made eligible. There is only a MDET team so IEP should be replaced with MDET.</p> <p>P. 8 4.1.1 a. Define who the professionals need to be and clarify parent participation.</p> <p>P. 9 B should include (c) due to high mobility of student or poor attendance.</p> <p>P. 10 (h) written certification seems to mean an additional report.</p>	- NA  - NA  0 N  - NA  - NA  - NA  0 N	Federal language  Not a proposed change  Federal requirement  Federal language  Defined in LEA policies and procedures Exceeds federal requirement

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Gerry Sokol Dir. of Spec. Ed. Jefferson Co. Schools (continued)	<p>P. 12. b. Behavior Disorders should be changed to emotionally disturbed to align with the federal regs.</p> <p>P. 14 Under Gifted and B. Please include the ability to use verbal or nonverbal scale of a comprehensive IQ test because you are excluding the deaf and hard of hearing and certain disabled students.</p> <p>P. 15 D (b). "historically under represented..." sets no standards.</p> <p>P. 22 (c)(a) Please define and give examples of known special considerations.</p> <p>P. 24 TBI A. Brain injuries include acquired brain injuries such as brain tumors which are degenerative but are legitimate when, e.g. they are removed. Please include acquired brain injuries and exclude degenerative.</p> <p>P. 24 B. (a) Please allow neuropsychologist to be changed to neuropsychologist who can direct or consult with school psychologists or interpret the test results of school psychologists.</p> <p>P. 18 The definition of Mental Impairment should delineate when it's mild, moderate, and severe to allow caseloads to be determined as mentioned later in the document (e.g. on p. 40). Achievement should be addressed.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Established WV terminology</p> <p>Implementation Issue</p> <p>Agreement with OCR</p> <p>Training issue</p> <p>Federal language</p> <p>Not a proposed change</p> <p>Not a proposed change</p>
6/25/99	Ginger Huffman Office of Special Education	2.1.3.a If educational performance is indicated should the SAT-9 scores be used as the level of measure of educational performance?	O N	
6/25/99	Andrew Cockburn, President Monongalia County Association for Enrichment	<p>2.1 We support the change that students should be identified and referred "even if they are advancing from grade to grade". Many gifted students require acceleration. Merely advancing from grade to grade is not true success for gifted students.</p> <p>2.1.3 a. We support the change in this section. The previous wording would exclude gifted.</p>	<p>+ N</p> <p>+ N</p>	

Date	Individual / Organization	Comments	Type/Action	Rationale
6/25/99	Pamela Kohner, Dir. of Spec. Ed. Wirt County Schools	<p>2.1 The policy statement should include Head Start in the child find activities to ensure participation since Head Start is a separate public agency.</p> <p>2.1.3 "Team" not defined..</p> <p>2.1.3.a. "School Team" should be identified in relation to the School Assistance Program (SAP) so that two separate systems are not established. This should be a coordinated, consistent process from the initial referral</p> <p>2.1.3.a If educational performance is used as a standard, SAT/9 should be specified as the baseline on which to compare performance or education performance clearly defined.</p>	<p>- NA</p> <p>O N</p> <p>- NA</p> <p>- NA</p>	<p>Exceeds federal requirement</p> <p>Defined in LEA policies and procedures</p> <p>Training issue</p>
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	Parents should be on the team that develops public awareness, child find activities as well as for all local policy development.	- NA	Exceeds federal requirement
6/25/99	Connie Matthews, Parent	2.1 Identification/Referral - Policy Statement The statement in Policy 2419 violates 34 CFR 300.121. Each public agency shall conduct child find activities to ensure that all students with disabilities, age 0-21. The legal right ends with the 22nd birthday.	- NA	Federal requirement Meets W V Code

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Anne Fishkin MUGC	<p>Section 126CSR16. F. Gifted. B. (a) Intellectual Ability. The proposed revision to eliminate section (a)(B), consideration of verbal or nonverbal scales of a comprehensive test of intellectual ability is highly inappropriate. It will make the WV regulations, which are already one of the more restrictive policies for gifted services in the country, more restrictive. It will reduce the possibility of gifted identification for those children, for example, who have highly verbal abilities but who are reflective and slow, and do not earn bonus points for speed on the Wechsler Intelligence Scale for Children-III. The WISC-III is a much more highly speeded test in the performance IQ scales than the WISC-R. My research, (see Fishkin, Kampsneider, &amp; Silverman, 1997) shows support that the WISC-III full scale score seeks to identify children who show high giftedness, for example, on the Verbal Comprehension Index scale. According to J. Sattler, <u>Assessment of Children</u>, it is inappropriate to rely only upon full scale score for gifted youth or any youth who have highly disparate scores. The full scale, or composite score does not appropriately reflect a child's abilities when they are very uneven. This holds true for many highly gifted youth and for children who are gifted and learning disabled or with behavior disorders.</p> <p>Suggestions: 1) See WV Association for the Gifted policy statement on Gifted Identification</p> <p>2) Keep Section (B) and modify as follows: Intellectual functioning 2.0 or more standard deviations above the mean, with consideration of 1.0 standard error of measurement at the 68% confidence interval on a verbal or nonverbal scale of a comprehensive test of intellectual ability <del>if the student is disabled or economically disadvantaged, or if the student's primary language is other than English</del> and I would suggest that the Verbal Comprehension Index scale be considered as well as the Verbal IQ of the WISC-III or the Verbal Reasoning Scale of the Stanford Binet. The consideration of the verbal or performance scale as an eligibility measure should be available to any child who shows such high scores. This may make gifted eligibility accessible also to minority children who are not being adequately identified.</p>	- NA	Implementation issue
			0 N	
			- NA	Agreement with OCR

Date	Individual / Organization	Comments	Type/ Action	Rationale
<b>§126-16-3 Evaluation and Reevaluation</b>				
5/19/99	Annette Carey Office of Special Education	IDEA both in Statute and Regulations make a distinction between the IEP Team and those involved in the initial and reevaluation of a child. The latter includes the phrase "...the IEP team and other qualified individuals.." It is my understanding that this would include teachers of VI and HI at initial and reevaluations for students with sufficient sensory loss to adversely affect their educational performance regardless of their identified exceptionality. Note Sections §300.321 and §300.533 (a).	O N	
6/9/99	Joyce Canter, Specialist Kanawha County Schools	Clarify pg 7 B-C - how that can be accomplished/documentated	- NA	Defined in LEA policies and procedures
6/9/99	Gary Cross, Principal Ravenswood Elementary	Under this section, 80 days is <u>too long</u> . Parents feel it takes too long to get a child placed in the program. It is recommended that the process be shortened and time shortened to 45 days from beginning to end.  It is also recommended that additional psychologists be hired to meet the demands of evaluation and reevaluation. Additional evaluators need to be hired to do screening and other testing. Sp. Ed. Teachers are teaching and it is impossible to get the required testing completed.	- NA	Not a proposed change  Implementation issue
6/9/99	Jennifer Weekley Ritchie County Schools	A gifted student should be reevaluated as other students are. A "gifted" student with an IQ of 136 & performance and achievement scores of 89 desperately needs to have those needs addressed. Many times a student tested for gifted at a young age qualifies quite easily, but in time does not exhibit these behaviors.	+ N	
6/15/99	Karen Layne Kanawha County Schools	p.8 B f delete "individual"	- NA	Consistent with federal requirements
6/16/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	Draft Notice of Individual Evaluation/Re-evaluation request includes a statement from WV Code 18-2-5b informing parents of the authorization to bill Medicaid. Section 9.1.3.d of this policy requires parental permission to access public or private insurance. Will this form be revised to obtain permission to bill Medicaid as well all permission to complete the evaluation?	O N	
6/23/99	Deborah Kuhns, Teacher	Add boldface phrase: Page 2 3.1.3. Evaluation Components. b. When evaluating a student with an exceptionality, the evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected or identified exceptionality, and <b>whether or not health factors have been diagnosed.</b>	- NA	Federal language

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/24/99	Sarah Kendall, School Psychologist Kanawha County Schools	pg 7 (C) Conduct review without meeting . Good idea. Pg 8. (6) Omit word individual.	+ N - NA	Consistent with federal requirements
6/24/99	Joan Wilson Kanawha County Schools	p. 5 3.1.7.c. clarify... within 80 days... school days, calendar days, business days. p. 6 3.1.3.b Appreciate the opportunity to evaluate all the areas the team feels may effect the student's education. P. 7 3.1.3.C The language is unclear as to the procedure to <u>review</u> the needs for testing <u>without a meeting</u> . P. 7 3.1.3.d Observation by evaluation team member may or not be needed. This should be a MDET decision.	- NA + N O N O N	Training Issue
6/24/99	Kanawha County Schools	pg 8 - Cross-out the word individual (reevaluation of a gifted...)	- N	Consistent with federal requirements
6/25/99	Kanawha County Schools	3.1.3 Evaluation Components " ...Shall be observed by at least one multidisciplinary evaluation team member, other than the student's regular classroom teacher, in the regular classroom and, when appropriate, in at least one other setting." <u>WHY</u> add this? In many cases, this is overkill. Take this out and leave the decision of doing or not doing an observation up to the MDET. 3.1.2 <u>Multidisciplinary Evaluation Team Composition</u> : "for a student suspected of being sensory impaired... a licensed physician." Could an updated medical report suffice for the presence of a physician? Think of the cost!	- NA O N	Not a proposed change
6/25/99	Ginger Huffman Office of Special Education	3.1.3.b How will sufficiently comprehensive be monitored? Do we need to define this or will county policy and procedures cover this aspect?	O N	
6/25/99	Andrew Cockburn, President Monongalia County Association for Enrichment	3.1.3 c. A. We support the requirement to include input from parents and teachers. Although the use of standardized tests as the sole gatekeeper for gifted education is illegal, several West Virginia Counties have used them for this purpose.	+ N	

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/26/99	Pamela Kohner Dir. of Sp. Ed. Wirt County Schools	<p>3.1.2.b.C. "An individual qualified to teach a child of her or his age" should be designated as the preschool special needs teacher as the early intervention representative or "as appropriate" could be added to the statement. In small counties a regular education teacher with these qualifications is difficult to designate. The Kindergarten teachers, day care workers, or head start personnel do not have time available to participate in the evaluation of a student they do not know or may not have any further contact. For students who are already in early education programs such as day care or head start, it would be appropriate to include these personnel in the evaluation process.</p> <p>3.1.2.b.E. "A Licensed physician" as an evaluator needs to be written in such a way that the MDET can use available reports. If the MDET makes the referral, they could be financially responsible. This should be avoided, since many referrals to a physician (ENT, eye doctor) can be generated from the screening process and could be come an undue burden on the school systems.</p> <p>3.1.3.b. "Sufficiently comprehensive" needs to be defined</p> <p>3.1.3.c The initial evaluation &amp; reevaluation processes, although similar, are different enough that they should be treated separately. This information is confusing, indicates that a review may be conducted without a meeting, and requires test &amp; evaluations be conducted, nowhere does it indicate the need for parent consent. The reevaluation process and form should specify the minimal information that is mandatory.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Federal language</p> <p>Not a proposed change</p> <p>Training issue</p> <p>Federal language</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Charles Szasz, Lead School Psychologist Kanawha County Schools	<p>Page 21 <b>Specific Learning Disability</b>. The following should be changed: (B) A method utilizing the standard error of the difference scores should be used only if the technical data (i.e., test correlations) necessary to account for the effects of regression are not available. As the author of the West Virginia Learning Disability Discrepancy (LDD) software program, I came across a formula last October devised by Reynolds and Stanton (1988) to estimate IQ-achievement (test) correlations when none exists. This formula permits the computation of a discrepancy score using the regression to the mean in place of the antiquated standard error of the difference scores method. The standard error of the difference scores method does not allow regression to the mean to be used and instead, employs a <u>simple</u> difference method. The simple difference method is <u>less</u> accurate and <u>over</u> identifies students as learning disabled. I met with Dr. McInturff, who was then the learning disability coordinator, and shared with her the new formula. She approved the inclusion of the formula in the LDD program. The Reynolds and Stanton formula is vastly superior to the old standard error of the difference scores method and <u>should</u> be recommended as the alternative method for computing a discrepancy in the SLD guidelines when there are not test correlations. The formula is <u>already</u> included in the LDD program as a test template for intelligence and achievement tests without IQ-achievement correlations. Hence, <b>the following change is recommended:</b> (B) The test template for intelligence and achievement tests without IQ-achievement correlations in the West Virginia Learning Disability Discrepancy (LDD) software program shall be used when there are no intelligence-achievement correlations available.</p>	- NA	Not a proposed change

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/23/99	Charles Szasz, Lead School Psychologist Kanawha County Schools	<p>Page 12, b. <b>Behavior Disorders:</b> The category Behavior Disorder (BD) should be changed to Emotionally Disturbed or Emotionally Handicapped to avoid the confusion of a student who has behavior problems but does <b>not</b> qualify for BD services. The label of BD is very difficult for administrators, educators and parents alike to understand that a student exhibiting behaviors problems that are reflective of a conduct disorder or socially maladjustment but is not eligible for BD. The label of BD implies to them that a student who has behavior problems should automatically be made eligible. West Virginia's definition of Emotionally Disturbed mirrors the federal regulations with the exception of the label. It would be far easier to explain to administrators, educators and parents that a student that has behavior problems but does not qualify for these services because he (she) is not emotionally disturbed. School attorneys have also strongly recommended that the BD label be dropped in favor of Emotionally Disturbed.</p> <p>Page 12, f. <b>Gifted, (A)</b> The four core curricular areas <u>need</u> to be defined.</p> <p><b>Page 18, Mental Impairment B. (a):</b> After standard deviation of 15, <b>add:</b> or 16. Some intelligence tests such as the Stanford-Binet have a standard deviation of 16. The wording implies that only intelligence tests with standard deviations of 15 can be used in evaluations or reevaluations.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Established W V terminology</p> <p>Implementation issue</p> <p>Not a proposed change</p> <p>Implementation issue</p>
6/23/99	Sarah Umberger, Teacher	<p>Reevaluation is too subjective. I think at the elementary level at <u>least</u> reevaluation in all assessed areas should be repeated as development does not occur in all kids at the same time.</p>	- NA	Implementation issue
6/24/99	Bob Miller Dir. of Spec. Ed. Mineral County Schools	<p><u>Gifted Eligibility:</u> p. 16 [removal of old item (e) Eliminating the requirement for an annual review will save time and paperwork. Procedures for revisions should be specified in county procedures (since it is not addressed in Policy 2419).</p>	- NA	Required by W V Code
6/25/99	Patricia Schaeffer, Parent	<p>1) Thank-you for leaving in re-evaluation at eighth grade</p> <p>(page 8) please <u>reinstate</u> (page 18) that the 4 year high school plan <u>must</u> have an <u>annual</u> review.</p> <p>2) How are we evaluating non-English speaking students?</p>	<p>+ N</p> <p>- A</p> <p>0 N</p>	Language clarified

Date	Individual/ Organization	Comments	Type/ Action	Rationale
6/25/99	Gerry Sokol Dir. of Spec. Ed. Jefferson County Schools	3.1.3.D.d.A (pp7) Using the term IEP Team prior to the student being found eligible will add confusion to the process. Keep the term MDET in place.	- NA	Federal requirement
6/25/99	Ginny Simmons Office of Special Education	<p>Page 7 B(a) change "exceptionality" to "disability". Gifted students are not reevaluated for eligibility.</p> <p>Page 7 B(c) add "student with a disability." Gifted students are not reevaluated for eligibility.</p> <p>Page 7 B add (e) "except during the eighth grade, a reevaluation for gifted students shall be used for programmatic purposes only and not for eligibility".</p> <p>Page 15 D(b) Must be changed to read "If determined that the eligibility criteria and/or assessment instruments discriminate against a student because the student belongs to an historically under represented gifted population, eligibility for gifted services, described in the public agency's policies and procedures, shall be based upon criteria that complement the definition and eligibility for gifted in this policy."</p>	<p>- A</p> <p>- A</p> <p>- A</p> <p>- A</p>	<p>Gifted students are not reevaluated for eligibility</p> <p>Supports the state implementation for gifted eligibility</p> <p>Language added</p> <p>Language added</p>
6/25/99	Connie Matthews, Parent	3.1.2. Multidisciplinary Evaluation Team Violates 20 USC 1415(b) Policy 2419 does not have the parent as part of the MDET.	- NA	Meets federal requirement
6/25/99	Susan Barnes Sp. Ed. Coordinator RESA I	<p>p. 6 Change adaptive behavior to skills is a good change.</p> <p>P. 7 C. may conduct - good allowance for flexibility.</p>	<p>+ N</p> <p>+ N</p>	
6/25/99	Toni Parsons, School Psychologist Monongalia County Schools	<p>Page 5. D. Audiologist should be singular.</p> <p>Page 6. b. Delete "When evaluating a student with an exceptionality,"</p> <p>Page 7, C. How can a team whose membership meets Sec. 5.1.2.a. conduct its review without a meeting.?</p>	<p>- A</p> <p>- NA</p> <p>O N</p>	<p>Typo</p> <p>Federal language</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
<b>§126-16-4. Eligibility</b>				
5/21/99	Marla Wightman Nicholas County Schools	Adding "ADD/ADHD to "child with a Disability" I do not believe this should be added as a disability. These students/people will then be able to get SSI benefits. The government has difficulty meeting the really disabled people's needs without adding another group.	- NA	Federal requirement
6/1/99	Karen Linton Davis Center School	Under 4.1.2.b.a, I have a problem with a "lack of instruction in reading or math" not being a determining factor for eligibility. Many of our students have been out of school for at least a year. Due to this lapse in their education, they demonstrate deficits in their academic skills. This provides a discrepancy between their achievement and performance scores and should qualify them for services if they are needed.	- NA	Federal requirement
6/4/99	Josie McInturff Mercer County Schools	p. 22 - IA a <u>exhibit</u> change to <u>exhibits</u> .	- A	Typo
6/7/99	Elaine S. Max Jackson County Schools	Behavior Disorders needs to be changed to <b>Emotional Disturbance</b> to match the language of the Federal Regulations. The definitions in 2419 and the Federal Regulations are identical.	- NA	Established WV terminology
6/9/99	Joyce Canter, Specialist Kanawha County Schools	pg 8 4.1.1 a - clarify - some professionals means how many.  Clarify pg 18 a - range of IQ 70-75 what determines.  Pg 26 5.1.3 a clarify does it mean as limited as WL - ex "LD" - "WL" - only  LD pg 22 a clarify what would be examples of special considerations of educational assessment (as written only need to consider IQ and adaptive)	- NA  - NA  O N  - NA	Defined in LEA policies and procedures  Implementation Issue  Implementation issue
6/9/99	Lisa Austin Kanawha County Schools	4.1.3 h.A. & i.A. <u>include but not limited to</u> (add this language to definitions)	- NA	Federal language
6/9/99	Jennifer Weekley Ritchie County Schools	The parent should definitely be involved in the IEP process, but does not need to be on the Eligibility Committee.  If an LD team report must be done, please assure it is easily understood and not such a repetitive form.	- NA  O N	Federal requirement

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/15/99	Karen Layne Kanawha County Schools	[gifted] p.14 f, (B) Maintain entire paragraph, after "disadvantaged", add " <u>an historically under represented population,</u> " and add "standard" to the phrase "other than <u>standard English...</u> " {this might help the OCR cause}	- NA	Agreement with OCR
6/15/99	Vic Fisher Dir. of Spec. Ed. Harrison County Schools	4.1.3, f, D, (a) When a student... The purpose of allowing for 1.0 standard error of measurement appears to allow for the potential inaccuracies in testing, the additional requirement of 'documenting the potential to achieve' seems unnecessary as well as very impractical and awkward to implement. I suggest deletion of this entire section (a).  4.1.3, f D, (b) If determined that... This is very vague and could lead to wide differences in interpretations across the state. Shouldn't the criteria be the same statewide? What is the criteria? Allowing policies and procedures to differ between McDowell and Hancock Counties could be discriminating as well as politically unsavory. I would very much like the state department of education to clearly specify this criteria.	- NA	Not a proposed change
		4.1.3, f D, (d) If the student... I am glad to see that four year plans are limited to exceptional gifted. The current method has caused considerable confusion and misunderstanding in our county.	O N	Agreement with OCR/ Implementation issue

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/15/99	Marilyn Wolfingbanger Nichols, Parent Kanawha County Parent Educator Resource Center	<p>p. 15 under A. Please name the 4 core curriculum areas or place a reference where they are contained in this or another document. For example: reading may be a core curriculum area in Elementary school, but reading is not a subject in the secondary grades. Perhaps the core curriculum area would be English.</p> <p>Page 15 under C. (b) It appears from this statement that a student can be identified as Exceptional Gifted in grades 9-12 based on a low family income. (As defined in the public agency's policies and procedures). This statement does not explain how a county would identify these students: perhaps based on free or reduced lunches or if the county is obligated to attempt to identify these students.</p> <p>Page 15 under (C). (c) It appears that a student who is "underachieving" can be identified as Exceptional Gifted. A definition of underachieving needs to be given. One person may say all "B"'s is underachieving for a very bright student. Someone else may insist that underachieving is a "C" in a single subject.</p> <p>Page 16 - 18 under g. The mild, moderate, and severe labels for mental impairment are discontinued, yet on page 40 these labels are used to identify caseloads. This is inconsistent.</p> <p>Page 16 under (d) "The implementation of this plan is required" No where in this document does it address any procedural safeguards for parents if the school does not implement the four year plan. This needs to be addressed be here, or somewhere else in Policy 2419.</p>	<p>- NA</p> <p>O N</p> <p>- NA</p> <p>- A</p> <p>- NA</p>	<p>Implementation Issue</p> <p>Not a proposed change</p> <p>Revision will be phased in 7/1/00.</p> <p>Protections under other SBE policies apply</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/16/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	<p>A statewide format, developed by the OSE for the SLD Team Report containing the required components listed in 4.1.2.b.c. would be helpful to counties</p> <p>4.1.3 Definitions and Eligibility Criteria: The purpose statement of this policy espouses the maintenance of federal language. 4.1.3.b. creates a category of exceptionality termed "Behavior Disorders" which is inconsistent with the federal language that defines "Emotional Disturbance". This terminology is confusing to general educators and administrators in dealing with behavioral issues of students who are socially maladjusted (i.e., conduct disordered or other) and, by definition, not eligible for special education and related services. This language needs to be consistent with the federal language and clarified for LEAs in making determinations of eligibility within this category.</p> <p>The OSE needs to address the category of Developmentally Delayed. It is very difficult and unfair to identify young children as mentally impaired. Identification and programming for students who exhibit developmental delays should address delays evidenced by environmental factors</p> <p>If <i>economically disadvantaged</i> continues to be included as part of the OSE eligibility criteria for exceptional gifted, a definition should be included to ensure consistency of implementation.</p> <p>4.1.3.f.D.e. Requiring the annual review of the Gifted Four Year Plan for non-exceptional gifted students has been stricken from the policy. Provisions should be included somewhere in state board policy that address requirements for implementation and review of this plan which is still required as indicated in 4.1.3.f.D.d.</p> <p>The distinction between mild, moderate, and severe mental impairments has been removed.</p>	<p>O N</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- A</p> <p>O N</p>	<p>Implementation issue</p> <p>Established WV practice</p> <p>Impact of proposed changes requires further study and consideration</p> <p>Defined in LEA policies and procedures</p> <p>Language added</p>
6/23/99	Deborah Kuhns, Teacher	<p>Eliminate the boldface sentence: Page 10 4.1.3. a. Autism A. <b>The term does not apply if a student's educational performance is affected primarily because the student has a behavior disorder, as defined in these regulations.</b> (The reason this sentence should be eliminated is because a student with autism would still be identified as autistic whether or not he/she had a behavior disorder).</p> <p>Page 21 (b) insert of 20 pts. or more after the word discrepancy. Eliminate (A) Eliminate (B) and (C) should be (c).</p>	<p>- NA</p> <p>- NA</p>	<p>Not a proposed change</p> <p>Not a proposed change</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/23/99	Beverly Griffith, Teacher Wood County Schools	I am concerned that you now have only one classification for mental impairments. I suggest that this part of the policy be left as it was. To place all levels of mental impairments into one classroom would not be beneficial to anyone.	- NA	Not a proposed change
6/24/99	Sarah Kendall, School Psychologist Kanawha County Schools	SLD pg 21 (b) I very much agree with "in one or more of the following areas". We needlessly have been required in the past to evaluate areas of no concern and as a result exclude some kids who really have learning disabilities.	+ N	
6/24/99	Joan Wilson Kanawha County Schools	<p>4.1.3.1.B.(c) (B) Fluency... existence of <u>dysfluency</u> impairment. P. 23 should be .....  <u>fluency</u> impairment <u>dysfluency</u> impairment.</p> <p>4.1.3.1.B. (a) (B) LQ of 77 or less limits use to tests with mean at 100. Needs to include flexibility for tests with mean of 50 or other.</p> <p>p. 13 4.1.3.c.B.(d) Appropriate reflection of the current research.</p> <p>P. 12 4.1.3.b "BEHAVIOR DISORDERS" is OLD TERMINOLOGY. The Federal Regs. Says "EMOTIONALLY DISTURBED" Not Socially Maladjusted. (As reported by Charles Szasz at Public Hearing 6/8/99)</p>	<p>- A</p> <p>- NA</p> <p>+ N</p> <p>- NA</p>	<p>Language added</p> <p>Not a proposed change</p> <p>Established W V terminology</p>

Date	Individual/ Organization	Comments	Type/ Action	Rationale
6/25/99	Charles Szasz, Lead School Psychologist Kanawha County Schools	<p>Page 12, b. <u>Behavior Disorders</u> - Behavior Disorder should be changed to Emotionally Disturbed to avoid the confusion of a student with behavior problems but not eligible for BD services. Emotionally Disturbed is the same terminology in the Federal regulations. This change has been suggested by lawyers who specialized in special education law.</p> <p>Page 15. F. Gifted, (A) The four core curricular areas need to be defined.</p> <p>Page 18 <u>Mental Impairment B.</u> (a) After standard deviation of 15, add: or 16. Some intelligence tests; such as Stanford-Binet have a standard deviation of 16. The current working implies that only intelligence tests with standard deviation of 15 can be used in evaluation.</p> <p>Page 21 <u>Specific Learning Disability.</u> (B) A method utilizing the standard error of the difference scores.... available. This statement should be deleted because the new LDD program, which I designed, has a test template for tests without IE-achievement correlations to compute a discrepancy based on a new formula devised by Stanton Reynolds in 1988. This procedure was approved by Dr. Josie McInturff in November of 1988 to replace the standard error of the difference method. This new method was shared in the LDD workshops conducted in the <u>eight RESA regions.</u> 126-16-5 continued.</p> <p>Page 35 B.d consider deleting the word likelihood find it is ambiguous and word: regression <u>with</u> slow recoupment.</p> <p>Page 15 <u>Gifted C.</u> (d) The term psychological adjustment disorder refers to emotional or behavioral symptoms that do not persist for more than 6 months! Consequently, adjustment disorder is <u>not</u> equivalent to an emotional disturbance such as depression, schizophrenia, or anxiety. A student identified as gifted in the eighth grade who is experiencing stresses in the home that is transient in nature under this definition would be identified as exceptionally gifted.</p> <p>A better term would be emotionally disturbed.</p> <p>Page 19 <u>Other Health Impaired.</u> i Delete attention deficit disorder and add to attention deficit hyperactivity the following with or without hyperactivity.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Established W V terminology</p> <p>Implementation issue</p> <p>Not a proposed change</p> <p>Not a proposed change</p> <p>Training issue</p> <p>Not a proposed change</p> <p>Established W V terminology</p> <p>Federal language</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/24/99	Kanawha County Schools	<p>pg 14 - Retain part B under intelligence ability add "historically under represented population, or if the students primary language is standard English."</p> <p>Eligibility of the exceptional gifted students <u>should</u> be considered by the Eligibility Committee <u>not</u> the IEP team.</p> <p>Pg 15. C. Keep the new addition: and one or more of the following.</p> <p>Pg 19 Take ADD out. Just have ADHD Preschool.</p>	<p>- NA</p> <p>- A</p> <p>+ N</p> <p>- NA</p>	<p>Agreement with OCR</p> <p>Implementation Issue</p> <p>Federal definition</p>
6/25/99	Kanawha County Schools	<p>4.1.3 <u>Definitions and Eligibility Criteria</u>: Behavior Disorders - recommend this category be renamed <u>Emotional/Behavioral Disorders</u>, (EBD), as depression and many other psychiatric disorders are <u>not</u> truly behavioral in nature; for example, an anxious or depressed student many not manifest externalizing behaviors (which are largely what the previous BD criteria are)</p> <p>Also, what the related to the <u>Behavior Disorders</u> category. "B. the term does not apply to students who are socially maladjusted, unless it is determined that they meet the above definition". We recommend that there be defined, exclusionary criteria for the term "socially maladjusted". For example, consult the DSM - IV for Oppositional Defiant Disorder and/or Conduct Disorder Criteria.</p>	<p>- NA</p> <p>- NA</p>	<p>Established W V terminology</p> <p>Not a proposed change</p>
6/25/99	Dr. Christine Roman, MUGC	<p>Suggestion for adding functional visual problems to eligibility criteria in West Virginia: "adverse educational performance as determined by a formal functional visual assessment conducted by a certified teacher of children with visual impairment."</p>	<p>- NA</p>	<p>Impact of proposed change requires further study and consideration</p>
6/25/99	Andrea LaRue, Morgan County Schools	<p>Eligibility for Specific Learning Disabilities: 1) Many in the field of Learning Disabilities are calling into question the validity of the ability-achievement discrepancy model. Are there any plans to address those concerns?</p> <p>2) Please explain <u>exactly</u> how to compute a severe discrepancy - minimum of 1.75 standard deviations difference, taking regression and 1.0 SEM into account.</p> <p>3) Also, please explain <u>exactly</u> how to use the method utilizing the standard error of the difference scores.</p>	<p>O N</p> <p>- NA</p> <p>- NA</p>	<p>Not proposed change</p> <p>Not a proposed change</p>

Date	Individual / Organization	Comments	Type/Action	Rationale
6/25/99	Kathy Shower, School Psychologist Putnam County Schools	4.1.3.f.D.b. This is too vague and may give LEA's too much leeway in determining eligibility.	- NA	Not a proposed change
6/25/99	Andrew Cockburn, President Monongalia County Association for Enrichment	<p>4.1 We support the change in this section. The deletion of the wording "the determined exceptionality adversely affects the student's educational performance" makes it clear that gifted children are included.</p> <p>4.1.2a. We support the addition of parent input.</p> <p>4.1.2 b.A. We support the deletion of (b).</p> <p>4.1.3f.A. (a) We strongly oppose the changes in this section. Apparently these considerations were moved to 4.1.3.f.D. (B). However, the substitution of "historically under-represented gifted population" excludes many children whose primary language is not English. For example, at some schools in Monongalia County more than 25% of the children are non-native English speakers, including Arabic, Chinese, Hindi, Japanese, and many other nationalities. Most of these would not qualify under the definition of "historically under-represented", however the language problem still exists.</p> <p>We request the addition of the phrase "and children whose primary language is not English" to 4.1.3.f.D. (b) or to the definition in Section 126-16-1.</p> <p>4.1.3.f.D. (c), (d), (e) We strongly oppose these changes, especially the removal of the annual review of the four-year plan in high school. These are years of great intellectual, social, and emotional change. It is impossible to develop a four-year plan that will not require some review or modification. This change also removes the best mechanism for ensuring accountability for the performance of gifted students in high school. The simplest way of solving this problem would be to extend special education coverage to include services to gifted children in high school. We understand that this might require a change in the West Virginia Code, and therefore beyond the authority of the Department of Education. As an absolute minimum, however, the annual reviews should be retained.</p>	<p>+ N</p> <p>+ N</p> <p>+ N</p> <p>- NA</p> <p>- NA</p> <p>- A</p>	<p>Agreement with OCR</p> <p>Agreement with OCR</p> <p>Language Added</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Ginger Huffman Office of Special Education	<p>126-16-4 j (b) delete the statement or meets eligibility for one or more of the disabilities as defined in this section, except LD. If they meet one of the other disabilities then the child should be served within that category. The regulations do not indicate this statement is required.</p> <p>C. Special Considerations (b) This sentence must be added. The local education agency will participate in transition planning conferences arranged by the designated lead agency under section 637 (a)(8).</p> <p>(c). The sentence should read for a child who turns (3) years old in the spring/summer the LEA is responsible for the implementation of the IEP services for children as of the third birthday, regardless of which agency provides the services. In some cases, services may be split between the Part C program and the LEA, while in other cases the IEP services may be provided by Part C. The LEA is responsible for special education and related services for children with disabilities as of the third birthday and the Part C WV Birth to Three program cannot be legally obligated for services after the third birthday. However, the Part C program may agree to implement the IEP services. It may be prudent for the IEP committee to determine the level of services necessary to maintain skills over the summer months just as they would for extended school year services. The child's IEP team shall determine the date when services under the IEP of IFSP will begin.</p>	<p>- A</p> <p>- A</p> <p>- A</p>	<p>Exceeds federal regulations</p> <p>Reflects federal Part C regulations</p> <p>Reflects federal Part C regulations</p>

Date	Individual/ Organization	Comments	Type/ Action	Rationale
6/25/99	Pamela Kohner Dir. of Sp. Ed. Wirt County Schools	<p>4.1.2.a. "Parent Input" needs to be defined</p> <p>4.1.2.b.C. The "lack of instruction in reading or math &amp; "limited English proficiency" should be considerations on the team report for the initial eligibility.</p> <p>4.1.2.b.C.(h). In the case of a disagreement about eligibility, designate whether each team member must submit a separate written statement or just the one who disagrees.</p> <p>4.1.2.E. Indicate how to document when a student qualifies for more than one exceptionality area, i.e. MI &amp; SLI or PS &amp; SLD.</p> <p>4.1.3.b. Designate who makes the determination of a "a long period of time" and "to a marked degree"-these criteria are not measurable. If a student diagnosed according to the definition given does improve with interventions, part C. indicates that after documentation, the student no longer would qualify. This is confusing.</p> <p>4.1.3.b.A.(f). <i>Define "a schizophrenic condition" or designate who makes this determination.</i></p> <p>4.1.3.e.A.(a) "deficit in hearing" needs to be better defined".</p> <p>4.1.3.e.B.(a) A "hearing loss" should be defined in terms of dBs.</p> <p>4.1.3.g.A. Define how Traumatic Brain Injury in students under 18 years of age is distinguished from the MI population.</p> <p>4.1.3.g.B.(c). <i>Define "onset".</i></p> <p>4.1.3.h.B.(b). Define "educational needs". Indicate whether this includes only the 4 core curriculum areas or all areas of education, such as Physical Education.</p> <p>4.1.3.i.A. This statement opens the door for all ADD/ADHD students to be placed in special education. It does not include student with AIDS, which may be a significant health impairment that affects educational performance.</p> <p>4.1.3.i.B.(b) Define " educational needs".</p>	<p>- NA</p> <p>O N</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Defined in LEA policies and procedures</p> <p>Federal definition</p> <p>Training issue</p> <p>Not a proposed change</p> <p>Not a proposed change</p> <p>Not a proposed change</p> <p>Not a proposed change</p> <p>Training issue</p> <p>Training issue</p> <p>Training issue</p> <p>Federal language Training issue</p> <p>Training issue</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Pamela Kohner Dir. of Spec. Ed. Wirt County Schools	<p>4.1.3.j.B.(a). So many preschoolers qualify for services because they fall below the 75% of the normal rate of development in social/emotional/affective development &amp; self-help skills due to lack of opportunity-no playmates or preschool programs in rural area, lack of parenting skills which result in parents completing self-help skills for children because it is easier. These are not true disabilities and should be accounted for in the eligibility criteria.</p> <p>4.1.3.k.(a). This statement indicates that the EC, through the SLD Team Report, is the most significant factor in determining a learning disability. This seems to preclude the discrepancy formula that is determined through the psychological evaluation. Clarification of which information should be considered the most influential factor needs to be given.</p>	<p>- NA</p> <p>- NA</p>	<p>Reflects federal language</p> <p>Training issue</p>
6/25/99	Janet Michael Hampshire County Schools	<p>Part B under 126-16-4. 1.3.f has always allowed us to use a subtest (verbal or performance) score, rather than the full scale IQ score, to qualify a student (for gifted services) that is also (1) otherwise disabled (LD, BD, etc.), or (3) has English as a second language. Without this clause many of our BD/gifted and LD/gifted students will no longer qualify. At least 6 of my own students would not have qualified without this clause. I realize that this proposed change is probably to come closer to what the Office of Civil Rights considers nondiscriminatory. My suggestion is to keep this clause, but change the current working form its specific nature to the OCR working "traditionally under represented groups". Dr. Simmons informed me that even if this clause is eliminated that Local Education Agencies have the right to continue identifying students by using policy, LEAs will not do it. Please reconsider elimination of this eligibility clause. Without it, eligibility procedures will become MORE discriminatory, rather than less.</p>	<p>- NA</p>	<p>Agreement with OCR</p>
6/25/99	Linda Saxton & Judy Hansen, Teachers of Gifted	<p>We are strongly opposed to changing eligibility based on full scale IQ score to qualify a student for gifted services. Looking at only the full scale score will do the following: 1. Eliminate the opportunity for students to have all their educational needs met i.e. LD/gifted or BD/gifted. 2. Exacerbate the problem of cultural bias that research shows is evident in IQ testing. 3. Create an elitist gifted population through the elimination of use of a subtest score to identify the economically disadvantaged.</p>	<p>- NA</p>	<p>Agreement with OCR</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Lorida Humphrey, Katherine Seaman, Frances Eagar, Sarah Radow, Sally Hazard, Victoria Ronkin, Linday Sweeney Kanawha County Schools	As teachers of gifted we are concerned about the proposed changes in Policy 2419 under eligibility (126-16-4.1.3f(B)). We need to continue to use a subtest (verbal or performance) score, rather than the full scale IQ to qualify a student that is also (1) otherwise disabled, etc. (2) economically disadvantaged (3) has English as a second language or is (4) historically under represented.	- NA	Agreement with OCR
6/25/99	Betsy Scott Office of Special Education	4.1.3.b - Change Behavioral Disorders to Emotional/Behavior Disorders to prevent current under identification of students with emotional disorders.	- NA	Established W V terminology
6/25/99	Mike Sullivan, Exec. Dir. WVACEEC	Council feels that "ED" should be used rather than "BD". Rationale: ED is consistent with Federal language (a stated purpose of 2419 revisions) and is less likely to contribute to general misconceptions about the disability and is also less likely to lead to the typically punitive measures chosen as interventions with this disability group. Council feels the BD/ED issue is much more problematic than the MR/MI issue when used within Policy 2419.  Page 15 Council feels that the new statement (D.b.) related to historically under represented populations should be (if not specifically dictated by the OCR decision) made more generic (because under representation occurs with some other disability categories as well) and moved to the Eligibility Committee Section (after (g) on page 10 might be an appropriate location).	- NA	Established W V terminology
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	Better clarification has been provided for initiation of preschool services "as of their birthday" and that a transition process must be initiated prior to the child's third birthday.  Better clarification of Other Health Impaired has been provided.	+ N	Exceeds federal requirements
6/25/99	Patricia Schaeffer, Parent	Please return use of verbal or performance score instead of full scale score for LD; economically disadvantaged, NES (non-English speaker).  P. 15 Section (b) sounds very nebulous to me.	- NA  O N	Not a proposed change

Date	Individual/ Organization	Comments	Type/ Action	Rationale
6/25/99	David Gaudino, Teacher Marshall County Schools	<p>Eliminating section B on page 14 of this document will eliminate children who need services who have a number of disadvantages-especially students who are economically disadvantaged. In addition, the addition of b) on page 15 will not make up this difference because economically disadvantaged is not included in the paragraph.</p> <p>2) I strongly disagree with the addition of the phrase added in parts A, B &amp; C on the top of the page on page 15 saying "in one or more of the four core curriculum areas." This will not require schools to provide the affective services that many gifted children need. It also does not recognize the needs for creativity, counseling and the arts in a gifted child's IEP.</p> <p>3) In Part C. for exceptional gifted a part (e) should be added to cover economically disadvantaged under exceptional gifted.</p> <p>4) By eliminating paragraph e) should be added to cover economically disadvantaged under exceptional gifted.</p> <p>5) The new added paragraph d) does not require the exceptional gifted student's IEP to be updated yearly. This needs to be clarified.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Agreement with OCR</p> <p>Inconsistent with the state definition. Implementation issue</p> <p>Inconsistent with W V School Code</p> <p>Inconsistent with WV School Code</p> <p>Implementation issue</p>
6/25/99	Gerry Sokol Dir. of Spec. Ed. Jefferson County Schools	<p>g. Mentally Impaired (pp16) BRAVO - levels of impairment should be removed. However, 6.1.a.G (p.40) forces the programming of students according to their IQ. Remove working of mild, moderate, severe, profound from this section. Type of services should be delivered because of student need and not an IQ number.</p>	<p>+ N</p> <p>+ N</p>	
6/25/99	WV Parent Training and Information	<p>Page 12, add emotional to behavior disorder.</p> <p>Page 20, k.A. change significant deficits to imperfect ability to match statute language. Also addition of language of "including perceptual brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</p> <p>Page 21, C. 1. Change sensory to visual, hearing, or motor disability.</p> <p>C. 3. Add emotional disturbance.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Established WV terminology</p> <p>Not a proposed change</p> <p>Not a proposed change</p> <p>Established WV terminology</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Susan Barnes Sp. Ed. Coordinator RESA I	p. 12 Behavior Disorder should be changed to match IDEA.	- NA	Established WV terminology
6/25/99	Toni Parsons, School Psychologist Monongalia County Schools	<p>Page 8. a. Change Eligibility Committee to Eligibility/IEP Team because the federal regulations never mention EC and the IEP Team can serve many functions including determining eligibility. Consider modifying forms to be consistent.</p> <p>Page 9. f. How can an EC determine whether or not the discrepancy "is not correctable without special education..."? How long should it take for special education to correct the discrepancy?</p> <p>Page 15, (A) &amp; (B) What score on an achievement test or what kind of classroom performance would indicate "that the student requires specially designed instruction..."? Would it be a standard score above 130 or below 100? Would it be doing above average work or below average work?</p>	<p>- NA</p> <p>O N</p> <p>O N</p>	<p>Defined in LEA policies and procedures</p>
<b>§126-16-5. Individualized Education Program Process</b>				
6/4/99	Josie McInturff Mercer County Schools	p. 27 B (a) educational change to educational.	- A	Typo
6/8/99	Elaine S. Max Jackson County Schools	<p>5.1.3. IEP Content (c)F. What happened to "accommodations"? If it is mentioned somewhere else, it should be cited.</p> <p>5.1.b.E. (b) &amp; (c): Home/hospital services require a physician's request and explanation. Placing a student in OSE is an IEPT decision, but home/hospital is not. The student may need an IEP for the home/hospital placement, but should it be included under Special Education: Out-of-School Environment? Using the logic for home/hospital, would it not follow that students who are incarcerated are also in OSE?</p>	<p>- A</p> <p>- NA</p>	<p>Language added</p> <p>Federal requirement</p>
6/9/99	Joyce Canter, Specialist Kanawha County School	<p>Does this mean all IEP Goals/Objs. Reflect WL?</p> <p>Pg 30 i clarify - teachers - (reg/sp) need to be able to utilize "sign lang" for example.</p> <p>j clarify device by "Brand name?"</p> <p>Clarify pg 32 - difference between A. b./c</p>	<p>O N</p> <p>+ N</p> <p>O N</p> <p>- NA</p>	<p>Not a proposed change</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/9/99	Lisa Austin Kanawha County Schools	5.1.3a.B.(a) educational	- A	Typo
6/9/99	Jennifer Weekley Ritchie County Schools	Section D - This section, which includes a double negative should be reworded so it is not confusing. (IE. A statement to which the student will be able and participate with non-exceptional peers.)	- NA	Federal language
6/15/99	Vic Fisher Dir. of Spec. Ed. Harrison County Schools	5.1.5, g. The student's (age 3-5)... I believe this section is unnecessary, confusing and should be deleted. I believe the current definitions of RE:FT, RE:PT, SE:SC and SE:RF are sufficient. Including and listing private and parochial options may suggest to parents and the IEP Team that these are required placement options.	- NA	Consistency with federal reporting language
6/17/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	5.1.5.g.A-D (Preschool Placement Options) are inconsistent with the LRE terminology for preschool listed in Section 6.i.5.b.J.  5.1.5.f.E. moves home/hospital instruction from Administration of Services, where it was considered an extension of the IEP, to be included under Special Education: Out-of-School-Environment (OSE) as a placement option. This "change of placement" requires an IEP team meeting to change the student's placement to OSE and then from OSE back to the Previous IEP placement. This poses an undue hardship for the parent as well as the LEA. It is difficult enough to schedule annual reviews and additional meetings as needed for discussion for programmatic issues and progress. Home/hospital instruction should continue to be considered an extension of services outlined on the current IEP with the appropriate medical documentation from the physician.	- A  - N	Section 6.1.5 partially revised  Federal requirement
6/24/99	Gerry Sokol Dir. of Spec. Ed. Jefferson County Schools	Annual Review new form very cumbersome; takes over one hour.	O N	

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/24/99	Sarah Kendall, School Psychologist Kanawha County Schools	<p>Make it ADHD instead of ADD.</p> <p>Do not require a M.D. diagnosis for ADHD allow qualified professional to make diagnosis.</p> <p>Add standard English to Gifted and allow for gifted LD etc. in grade ---- of 1998 to replace the standard error of the difference method. This new method was shared in the LDD workshops conducted in the eight RESA regions.</p> <p>126-16-5 con. P 35 B.d Consider deleting the word likelihood in it is ambiguous and word! Regression with slow recoupment...</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Federal language</p> <p>Established W V practice</p> <p>Not a proposed change</p> <p>Training issue</p>
6/24/99	Charles Szasz, Lead Psychologist Kanawha County Schools	<p>Pg 15 Gifted, C. (d) the term psychological adjustment disordered for eligibility as exceptional gifted is inappropriate and incorrect. In DSM IV, adjustment disorder refers to emotional or behavioral symptoms that do not persist for more than 6 months! Consequently, adjustment disorder is <u>not</u> equivalent to an emotional disturbance such as depressions, schizophrenia, or anxiety. A student identified as gifted in the eighth grade who is experiencing stresses in the home that is transient in nature under this definition would be identified as exceptionally gifted. A better term would be emotionally disturbed.</p> <p>Page 19 Other Health Impaired, i.delete attention deficit disorder and add to attention deficit hyperactivity the following with or without hyperactivity.</p>	<p>- NA</p> <p>- NA</p>	<p>W V Code</p> <p>Federal definition</p>
6/24/99	Joan Wilson Kanawha County Schools	<p>p. 25 5.1.2.a.A. Number of people required for IEP Team is not clear - 7, 6, 5,</p> <p>4, 3. P. 27 5.1.3.a.C. Additions of ... "supplementary aids/services... on behalf of the student... supports for school personnel" ... <u>Very Appropriate Additions.</u></p> <p>p. 27 5.1.3.a.B.(a) SPELL CHECK "Meeting... educational needs..." should be ... educational needs..."</p> <p>p. 35 5.1.5.i Guidelines for eligibility for ESY. What criteria are to be used, if regression/recoupment i. B. (a) is not documented. "Suspected Regression" clarify "... may exhibit..."</p> <p>5.1.5.i.D New goals for next year on current IEP cannot be maintained when no instruction on some goals has been done.</p>	<p>- NA</p> <p>+ N</p> <p>- A</p> <p>- NA</p> <p>O N</p>	<p>Implementation issue</p> <p>Typo</p> <p>Training issue</p>

Date	Individual / Organization	Comments	Type/Action	Rationale
6/24/99	Kanawha County Schools	<p>P. 41-42 Preschool Special Needs.: Time allocations should be consistent with new placement options. i.e.: (p.33) A. B. C. D. Early Childhood.</p> <p>P. 16. Inconsistency in MI - eliminating terms mild, moderate &amp; severe but not in caseloads (p.40) caseloads are calculated by mild/moderate/severe.</p> <p>P. 25 5.1.2.a.B. Please remove the "and" in the term including the referring (and), when entitled, the receiving teacher" because the receiving teacher isn't known for the following year when IEP's are done at the end of the year .</p> <p>P. 26 5.1.3. The IEP seems to indicate that it could function around a student where only impairment is written language.</p> <p>P. 27 B (a) educational is misspelled.</p> <p>P. 29 A. There is inconsistency in the use of the age 14 in addressing transition. (Change page 26 e b it says any age) (Change p. 30, A. if student age 14 or older...)</p> <p>P. 30 j. "A particular device" implies a brand name &amp; possibly many dollars. Please change it to "particular type of device".</p> <p>P. 34 H. This is not clear.</p> <p>P.47 e A Homebound students considered medically fragile appear to be without service.</p>	<p>- A</p> <p>- A</p> <p>- NA</p> <p>O N</p> <p>O A</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Section 6.1.5 partially revised</p> <p>Revision will become effective 7/1/00.</p> <p>W V Code</p> <p>Typo</p> <p>Federal requirement</p> <p>Federal language</p> <p>Federal requirement</p> <p>Training issue</p>
6/25/99	Ginger Huffman Office of Special Education	Page 31 B. The removal from the regular educational environment or for preschoolers, as appropriate, to participate in appropriate activities occurs only...	- A	Federal requirement
6/25/99	Andrea LaRue Morgan County Schools	<p>1) Is it necessary for every IEP team member to be present for the entire meeting? Our schools' schedules are completely disrupted and regular classroom, as well as special education class - instruction is sacrificed to the IEP process each Spring during IEP Review.</p> <p>2) What is the absolute minimum membership required at every IEP meeting?</p>	O N	Federal requirement

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Andrew Cockburn, President Monongalia County Association for Enrichment	<p>5.1.4 a. We recommend changing this section to read "The IEP for a gifted student shall include acceleration as the primary consideration and, when appropriate, include the effects of acceleration on the student's graduation". Similar language was present in a previous version.</p> <p>5.1.5 e. A. and B. We strongly object to the implication that the Department of Education discourages grouping of gifted students. In section A "disabled" should be substituted for "exceptional". In section B "disability" should be substituted for "exceptionality" and the phrase discussing gifted removed. Grouping of gifted students outside of the regular classroom is an absolute requirement for many acceleration options.</p> <p>126-16-5 h. H. We very strongly object to this section as worded. It should be made clear that this applies only to disabled students, not to gifted students. Removal from the classroom "solely because of needed modifications in the general curriculum" may be necessary for some forms of acceleration.</p>	<p>- A</p> <p>- NA</p> <p>- NA</p>	<p>Language clarified</p> <p>Not a proposed change.</p> <p>Consistency with federal language.</p>
6/25/99	Pamela Kohner Dir. of Sp. Ed. Wirt County Schools	<p>5.1.3.a.D. The way this reads, it is left open to interpretation when to include the explanation of NOT participating with non-exceptional peers. In this format, students who have an LRE of 1 or receive consultant services only would not be required to have this statement included on their IEP. Compliance procedures require it for all students with an IEP.</p> <p>5.1.5.d.C. The "reason for any removal" more accurately describes the statement required on the IEP form rather than explanation of non-participation as described above.</p> <p>5.1.5.g.A-D The preschool placement options need to be revised on the IEP forms and on the WVEIS system to indicate these choices.</p>	<p>- NA</p> <p>O N</p> <p>O N</p>	<p>Federal language</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Kenneth Legg WV School Service Personnel Association	<p>p.24 - We suggest a requirement that the student's annual IEP review be completed no later than June 1<sup>st</sup> of each school year. This would facilitate staffing arrangements for the coming school year.</p> <p>1.2., p.25 - We suggest the amendment of section "F" to require the inclusion of the teacher's aide assigned to the student or the classroom where the student receives a significant portion of his or her instruction on the IEP team.</p> <p>1.4.(c), p.28 - We suggest that a specific reference be made to include the capacity or tendency of the student to physically or verbally abuse staff and/or other students are a factor in planning strategies to properly educate the student.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Exceeds federal requirements</p> <p>Exceeds federal requirements</p> <p>Exceeds federal requirements</p>
6/25/99	Mike Sullivan, Exec. Dir. WVACEEC	<p>Placement of Options (. 33) Because Out-of-School Environment placements are becoming increasingly frequent with recent concerns about safe-school's issues, the term " temporarily delivered" should be operationally defined.</p>	- NA	Training issue
6/25/99	Bob Miller Dir. of Sp. Ed. Mineral County Schools	<p>IEP Content p. 27 [a.d.] Statement should read..... and in the activities described in C above.</p>	- A	Typo
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	<p>Public agency is responsible for assuring certain professionals are in attendance. Develop a brochure for parents to understand who should be involved in IEP process.</p>	O N	
6/25/99	Patricia Shaeffer, Parent	<p>p. 28 PLEASE return the wording "acceleration shall be the primary consideration....." To the IEP section. We have struggled so long to have acceleration, this is a step backwards.</p>	- A	Language clarified
6/25/99	Gerry Sokol, Dir. of Sp. Ed. Jefferson County Schools	<p>5.1.1b (p 24) Keep this wording in.</p> <p>However the state IEP form does not lend itself to "review only no revision needed" provisions.</p> <p>5.1.4 f (pp 30) Do not force LEA's to place this statement on the IEP. Allow LEA's to use student handbooks, procedural safeguards or general public notice to convey this statement. This one little part will continue to add to the length of an already long IEP Meeting</p>	<p>+ N</p> <p>O N</p> <p>- NA</p>	<p>Federal requirement</p> <p>Implementation issue</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	WV Parent Training and Information	Page 28, I. Add the language "in addition to report cards".	- NA	Exceeds federal requirements
6/4/99	Susan Barnes Spec. Ed. Coordinator RESA I	<p>Page 26, b. Adolescent Transition - question "at any age", does not fit, is not clear what is meant.</p> <p>Page 35, a. Critical skills - by definition critical means of, relating to or being a turning point or especially important juncture: Not all students are at turning points and may not have critical skills". The OSE definition of critical is too broad and vague. Please consider revising the definition. Suggestion: essential, fundamentals.</p>	- NA	<p>Training issue</p> <p>Established WV paractice</p>
<b>§126-16-6. Administration of Services</b>				
6/4/99	Barbara Brazeau Division of Research, Technology and Professional Services WVDE	<p>I believe that the highlighted sections of Policy 5202 need to be built into Policy 2419 (listed below) revisions since the Special Ed. Directors don't read 5202. We encounter problems on county accreditation visits as a result.</p> <p>§126CSR136 9.5. Special Education Program: Out-of-School Environment. - An educator providing home teaching or visiting teacher services to eligible special education students in an Out-of-School Environment placement alternative as identified in the student's Individualized Education Program must hold a valid license with an endorsement appropriate for the exceptionality of the student(s) being served.</p> <p>9.6. Special Education. - Effective July 1, 1999, personnel newly assigned to a position working with special education students may: 1) deliver the instructional goals and objectives in any general or vocational specialization for which they hold licensure; or 2) deliver the instructional goals and objectives to those special education students who are not included in the regular classroom provided that the special education teachers collaborates with an educator licensed in the general or vocational specialization for which instruction is provided; or 3) collaborate with the general or vocational teacher when special education students are included in the regular classroom. 9.11. Contracted or RESA Services. - An educator providing contracted services or services through a Regional Education Service Agency (RESA) must hold the same licensure required for an educator employed by a board of education</p>	- NA	Implementation issue

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/9/99	Gary Cross, Principal Ravenswood Elementary	Students with IQ's below 80 should be considered for Mentally Impaired. These students usually drop in ability over a very short period of time. These children need help and they are limited as to what they can do.	- NA	Not a proposed change
6/15/99	Karen Layne Kanawha County Schools	<p>p. 50 A the new requirement for providing transportation from private schools to a service location may increase transportation costs.</p> <p>P. 49 The requirements for the component parts of service plan are still unclear. We need a clarification concerning the service plan that contains dual eligibility [gifted/LDJ] or eligibility with related service [gifted/speech] as to when the parent may choose one service, but not the other, or must parents accept all services just as with the IEP process.</p> <p>P.52 7.1.1.b. Cross out "at a time".</p>	- NA  - NA  - NA	Federal requirement  Training issue  Federal requirement

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/15/99	Marilyn Wolfingbarger Nichols, Parent	<p>Page 36 under 6.1.2.a "The student's IEP will be accessible..." Parents complain that the IEP is accessible to those who are NOT responsible for its implementation. Parents believe this is a confidentiality issue. Please explain in this section, or another section that the IEP is not to be given to those who are not providing services to the student.</p> <p>Page 37 under 6.1.3.a. The statement about "minimum certification standards" needs to explain whether a "Permit" qualifies as minimum certification standards, and if so, how long the permit status is available.</p>	<ul style="list-style-type: none"> <li>- NA</li>   <li>- NA</li> </ul>	<p>Training issue</p> <p>Other SBE policies clarify</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/15/99	Marilyn Wolfingbarger Nichols (continued)	<p>Page 49 e. This entire sentence is unclear. I cannot find 6.1.6.a.-e. Perhaps it is 6.1.6.A-e (There is a difference in: a and A in this document).</p> <p>"Consultation" needs to be defined. A formal meeting needs to occur. The word "consultation" appears to mean that the county can simply respond in a phone call and say "No, we will not serve this private school student".</p> <p>Page 50 C. This statement mentions that transportation costs can be calculated to see if the requirement of 6.1.6.b has been met. This concept of "calculating" and how it is determined that private school students are selected for services is entirely left out of this document. Policy 2419 needs to explain how the number and amount of services for private school special needs students will be determined. It should be on a percentage basis by disability, or total amount of students needing services in the private schools, or based on cost etc. This needs to be addressed. The counties also should be required to report the number of students by private school or homeschool, the disability, types of services provided etc. Without some sort of "calculating" mechanism a county could simply say "We've met our quota." This needs to be public information. Keeping this section vague, only opens things up for interpretation and lawsuits.</p>	<p>- A</p> <p>- NA</p> <p>- NA</p>	<p>Typo</p> <p>Implementation issue</p> <p>Implementation issue</p>
6/17/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	<p>6.1.6.a. states, "Before a public agency places a student with <u>an</u> disability... Should be a disability.</p> <p>Same error in 6.1.8.a. ...services to be a student with <u>an</u> disability.</p> <p>6.1.7.j.A.b. references Section 6.1.6.a-e. There is no Section 6.1.6.e. -</p> <p>Home/Hospital Instruction was moved from this section.</p> <p>6.1.7.g.A. and 6.1.7.j. discuss "services plan" for private school students. Clarification needed as to the components of a services plan if this is different from an IEP.</p>	<p>- A</p> <p>- A</p> <p>- A</p> <p>O N</p> <p>- NA</p>	<p>Typo</p> <p>Typo</p> <p>Typo</p> <p></p> <p>Training issue</p>
6/24/99	Kanawha County Schools	<p>Special Considerations: Give examples &amp; clarify means and ways of funding to accommodate Part B children during the summer.</p> <p>Pg 33 Placement options for preschool students (3-5).</p>	<p>- NA</p> <p>O N</p>	<p>Training issue</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Ginger Huffman Office of Special Education	<p>Page 42 - Preschool B. Remove the reference to the minimum to twelve hours per week. Counties are interpreting this to mean all kids need 12 hours of services regardless of the IEP process there are only a few kids getting more or less hours. It should read to be considered a center-based program the services must be available 12 hours per week.</p> <p>2. Regular Education - part time-regular instruction in community based and/or regular education program occurs 40% or more. Do we want to make it consistent with the other percentages in 2419. This would be 21% to no more than 60% of the time.</p> <p>(C). Again clarify the intent of the twelve hours per week separate class instruction with time allocations for family consultation. The intent of the 12 hours is the program must be operating 12 hours per week not every child needs 12 hours of services per week.</p> <p>(C) (2) Policy 2419 does not address what happens when you have nine children in a preschool classroom. It goes from 8 children per session with one aide to 10 children per session with two aides. My suggestion is to change 8 to 9 per session with an aide for a max of 18.</p>	<p>- A</p> <p>- A</p> <p>- A</p> <p>- A</p>	<p>Placement option language deleted to avoid conflict with Section 5.1.5</p> <p>Placement option language deleted to avoid conflict with Section 5.1.5</p> <p>Revision will become effective 7/1/00</p> <p>Revision will become effective 7/1/00</p>
		<b>Caseloads</b>		
5/21/99	Dodie Rhodes Jackson County Schools	<p>While reviewing the worksheet I noticed there was not adequate categories pertaining to indirect service time spent in relation to the children. I added several categories to the list. 1. child find screening 14 hrs. yr; 2. Data collection 36 hrs. yr; 3. Writing test reports 48 hrs yr; 4. Progress reports 64 hrs. yr; 5. OT/PT consultations 18 hrs. yr; 6. Paperwork for meetings 30 hrs. yr; 7. The five categories listed on the worksheet is truly only half of the hours spent indirectly. Medications/documentation 25 mins. Week; 8. Parent involvement planning 2 hrs. month; 9. Parent workshops 3 hrs. month; and 10. Home visits 16 hrs. yr. There is much more time spent at home because of the lack of time of indirect services that must be completed for my children. If this worksheet is being used to help determine/change caseloads, then I'm certain there is a formula already drafted that takes into account the hours listed in the categories above.</p>	- NA	Training issue

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/8/99	Elaine S. Max Jackson County Schools	6.1.5. Caseloads estimates based on the 5 point scale: it appears that the more intense the service provided by the special education teacher, the less "credit" is given when compared with the teacher who does a lot of consultation. This tends to disfavor teachers with self-contained classrooms (esp., SPMI). It does help to clarify SLD work loads which include a great deal of inclusion and the attendant consultations.	- A	Language changed to more closely align with current practice
6/9/99	Lisa Austin Kanawha County Schools	6.1.3b certification in multi-cat. Classes still need class size limits. New caseloads say that ratings are added to reach caseloads evening out spread between numbers. Rating 33 to 99 rating 99 to 132 rating 132 to 198 rating 198 to 199	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement
6/9/99	Gary Cross, Principal Ravenswood Elementary	Weighted caseloads shall not exceed 30. Forty is too, too many!!	- NA	Implementation issue
6/8/99 6/9/99 6/10/99 6/10/99 6/11/99	WV Federation of Teachers  Rosemary Jenkins Perry West John O'Neal Bernie Hurst Kenny Stultz	WVFT objects to the proposed change to the assignment of service personnel, based upon students' needs rather than using the current formula. Under the new proposal, classroom aides will become virtually nonexistent. The current policy mandates that a special education aide be required after a specific number of students are being served in a special education classroom, for example an aide is required in a behavior disorder class if there are more than four students during any one instructional period for a teacher providing services to students that are classified regular education, part-time shall not exceed 8 students at early childhood or 10 students at middle and adolescent education. According to the new provisions, this requirement will be eliminated causing a potential for larger class sizes. The WVFT is recommending that the Policy be approved - with the exception of the proposed changes concerning caseloads in section §126-16-6-Administration of service beginning on page 44. We are asking to delay this section until after the school year starts to give the teachers adequate time to review and comment.	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement
6/9/99	Jennifer Weekley Ritchie County Schools	With the rating system you are proposing, the job I do would take at least 2 professional staff. This will significantly decrease in most cases the # of children we will be able to serve. As for there being no mandate for aides in the classroom, some teachers will be overwhelmed with many children to instruct without the assistance of an aide. This proposal will definitely have a negative impact on our children.	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/9/99	Gary Cross, Principal Ravenswood Elementary	<p>Sp. Ed. <u>Classes should not be weighted!</u> If a classroom has a certain number of students, it should be that number not a <u>portion of</u>.</p> <p>Students being served should be counted by each specialist that services the child. Duplicated and unduplicated should not be considered. If a teacher (Sp Ed.) services a child, they should be able to count that child on their caseload. A misrepresentation of the actual number of students being served is reported because of the fact some other specialist is serving the child and its counted on that persons caseload: totally unfair and misrepresented as far as services go to children.</p> <p>.. Speech is ridiculous. Fifty students is unreasonable. We need trained evaluators for special education. Our Sp Ed teacher are teaching and do not have time to screen and/or evaluate students.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Proposed caseload revisions address individual student needs regardless of exceptionality or placement</p> <p>Implementation issue</p> <p>Implementation issue</p>
6/15/99	Connie Heluey Grandparent of special education child	<p>We are concerned about the caseloads for special education classes, also the grouping of a wide range of ages in the same classroom. We feel this would be a detriment for the children in this type of setting. They require so much special attention which they would not get if the classes are large. Also, it would seem this would be frustrating and discouraging for the teachers.</p>	<p>- NA</p>	<p>Proposed caseload revisions address individual student needs regardless of exceptionality or placement.</p>
6/15/99	Vic Fisher Dir. of Spec. Ed. Harrison County Schools	<p>6.1.5, b. The following process for determining caseloads shall become effective July 1, 2000. I do not believe this section should be included until its impact on professional and service personnel staffing levels can be examined further.</p>	<p>- NA</p>	<p>Impact has been studied and carefully considered.</p>

Date	Individual/Organization	Comments	Type/Action	Rationale
6/15/99	Marilyn Wolfingbarger Nichols, Parent	<p>Page 41 under (c) Combination Program. This is my greatest area of concern. How the maximum caseload will be determined needs to be addressed. For example: A classroom with 6 mild MI students and 2 moderate MI students. On the previous page there is a maximum caseload of 8 mild MI students, but if you had 6 mild and 2 moderate students, it would appear that the caseload would be exceeded. could be used in other categories as well. The IEP shows minutes, and this would be easier to calculate caseloads. Most programs, outside the resource room setting, are combination programs. This is complicated, but a way to determine maximum caseloads needs to be addressed. Otherwise, these programs are "dumping" grounds for hard to serve students, or in small schools where the regular educator does not want to have any ADHD or LD students in their class.</p> <p>I think that the language on page 44 - 45 about minutes per week and a rating scale would be an improvement in this section. This needs to be a ratio of some sort so that a caseload can be determined. For example: 2 Mild MI = 1 moderate MI, or 2 moderate MI = 1 Severe MI. In my son's elementary combination program there is autistic, 1 orthopedically impaired, 1 ADHD, 1 LD/behavior disordered, and 4 mild MI in one class spanning grades 2 through 6 during one session. Please address caseloads. This is a concern for both parents and educators.</p> <p>Page 42 last sentence on the page. I believe that "eligible" students needs to include children who are speech delayed. Currently, they are served in the same session, but not included in the caseload count. Also, Preschool teachers are overwhelmed with multiple disabilities and young children with feeding/toileting/and behavior issues. This caseloads need to reflect something other than "head" count. The severity of the disability needs to be addressed. We are asking them to "educate" when there is barely enough time to feed/toilet, in other words "safely babysit" .</p> <p>Page 44-45 Rating System It appears that this rating system applies only to the TBI label and will not be effective until July 1, 2000. I believe that this rating system could be used in other categories as well. The IEP shows minutes, and this would be easier to calculate caseloads.</p> <p>"Consultation" needs to be defined. A formal meeting needs to occur.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- A</p> <p>- NA</p>	<p>Not a proposed change</p> <p>Proposed caseload revisions address individual student needs regardless of exceptionality or placement.</p> <p>Proposed caseload revisions address individual student needs regardless of exceptionality or placement.</p> <p>Text reformatted</p> <p>Defined in glossary</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/17/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	<p>Separate class configurations, as well as for BD teachers who have students with high needs for monitoring, intervention, and implementation of behavior management plans. Even with weighting, allowable caseloads are not an accurate reflection of available time for implementation of identified student needs. Although there are problems with the current caseload determination, I believe a defined caseload is preferable to the weighted formula which is ambiguous and relies too heavily on subjective factors creates great potential for manipulation to occur (which may not be based upon student need). If such a formula for caseload determination were to be mandated, WVDE would need to address additional positions in the state funding formula.</p> <p>What guidelines are to be utilized for purposes of reporting, caseload determinations, and staffing? Clarification needed.</p>	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement.
6/23/99	Beverly Griffith, Teacher	I suggest that you leave the caseload for mentally impaired as it was in the old Policy. An aide should be determined on need as well as on number of students in a class and who will determine if a class needs an aide? The same people controlling the purse strings?? If so, the needs of the children will never be met!	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement.
6/24/99	Joan Wilson Kanawha County Schools	<p>b. B. "Caseloads... supplemental aids/services... the other duties assigned to the special educator (e.g. screening... itinerant travel time Yeah! Appreciation of acknowledgment of "other things" needed to educate these students.</p> <p>p. 45 b. E. Clarify.... "the weighted caseloads shall be adjusted by multiplying the % of the week... available..."</p>	+ N	Training issue
6/24/99	Gerry Sokol Dir. of Spec. Ed. Jefferson County Schools	MI move to generic good.	+ N	
6/25/99	Andrea LaRue Morgan County Schools	<p>Caseload determination effective 7/1/00: If I understand the method of computation correctly, it is much more realistic and will contribute to better serving the students.</p> <p>If a student has a #4 rating, does that mean she/he is weighted as 4 out of a possible 40? Or then #4 students would be the maximum caseload of 40?</p>	+ N  O N	

Date	Individual /Organization	Comments	Type/ Action	Rationale
6/23/99	James G. Brown Dir. of Spec. Ed. Tyler County Schools	<p>Recently, I sent to your office a copy of Tyler County Schools Caseload Aggregated Adjustment Impact Study. The packet of information sent to you included a projection for how the new caseload requirements would impact Tyler County Schools with either the three part or five part rating systems. Personally, I feel the concept of incorporating indirect and direct minutes into teachers' caseload is long over due. Over the past decade, special needs students have become more and more integrated into the regular education classroom. In our county, special needs student in grades K-8 receive inclusive services approximately 90% of their school day. Supplemental reading programs, pre-teach activities, and re-teach activities have become part of the normal school day. Teachers collaborate on a daily, weekly, and monthly basis to ensure that student needs are being met. The existing caseload formula does not provide an avenue for these activities to be weighted into the process. After careful review of the data provided by our special education staff I feel confident in saying that the five point scale is an accurate account of the special education staffing needs in Tyler County. The additional teachers identified through projected caseloads for the 1999-2000 school year would provide our schools with enough staff to facilitate small group inclusive settings, pullout and resource settings for pre-teach and re-teach activities, and self-contained settings for students who require more intensive instructional modifications. Tyler County Schools projects an increase of at least four maybe five additional full time special education teachers. However, the costs associated with such an increase in staffing would create an extreme burden on our county's fiscal budget. Ultimately programs in other areas would be greatly effected. In respect to the three point scale, I feel this proposed plan is a reasonable compromise between the present caseload system and the proposed five point scale. The three point scale targeted programs in our county that we feel are at a point of distress and in the need of additional personnel. This plan would see an increase of one and a half special education teachers. In closing, a shift in philosophy, best practices, and the obvious lack of progression has forces the special education pendulum to swing toward full integration and away from self-continued settings. My concern, is that once again the delivery of services will not address students individual needs but will simply shift to the services that are available. Ultimately, staffing restraints will become the driving force of what services are available. The old adage applies, one teacher cannot provide resource and inclusive services at the same time in two different settings. In the past, special education students were placed in a self-contained setting because that was how the program was designed. In the future, students will be placed in inclusive settings, regardless of individual needs, because that is where the services will be available.</p>	- A	Language changed to more closely align with current practice

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/23/99	James G. Brown Dir. of Spec. Ed. Tyler County Schools (continued)	Only through additional staffing will the special education pendulum ever find its way to land in the middle, the best of both worlds! A change in the present caseload formula is definitely in order, at what cost is the real question!		

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/23/99	Yvonne Santin Dir. of Spec. Ed. Wood County Schools	<p>Comments &amp; suggestions on 6.1.5.b.A.: 1) The State Office of Special Education should work with staff of WVEIS to develop a system for overseeing the caseload of special educators and SLP's. This could be done by refining the system which already exists and would also assist the state in monitoring caseloads on a continual basis as opposed to once every four years. WVEIS HAS THIS POTENTIAL, LET'S USE IT!! ANY CASELOAD RATING SCALE WILL HAVE A DIRECT FISCAL IMPACT UPON COUNTY SCHOOL SYSTEMS!! 2) This system could be developed and presented at the annual state conference on the WVEIS system during the second week in June. 3) Much like the long-awaited IEP, this monitoring system would save time for local special education directors (many of whom wear several other hats) by eliminating the need to have a separate stand-alone computer program for determining caseloads. It would also enable state special education staff to provide technical assistance in this area (which is greatly needed if counties are "over the formula" due to special education).</p> <p>Comments on 6.1.5.b.B, 6.1.5.b.C, &amp; 6.1.5.b.D.: Attached is the data requested by the Office of Special Education regarding the proposed method of calculating caseloads utilizing the 3-point and 5-point scales. Also provided was the total number of teacher aides for each school and, (in parentheses), the number of aides "over the formula". Comments: 3-point scale + + + 1) Appears to result in less need for hiring additional staff due to exceeding weighted caseloads. - - - 2) Several staff (both teachers and service personnel) will need to be placed on the transfer and reduction-in-force list in order to realign staff. 2) Rating #1 reflects a range of minutes per week that is roughly equivalent to "up to 21% of the instructional day". This rating appears to reflect a need to increase the opportunities for more students to be served in regular education classroom. Does not provide enough flexibility in per documenting student's need for direct/indirect instruction and supplementary aids and services. 3) Rating #3 reflects a range of minutes that will continue to reinforce the pullout model for service delivery. The potentially highest rating has been given to a range which can reflect roughly 41% of the instructional day in pullout special education.</p> <p>5-point scale + + + 1) Allows for more flexibility in documenting student's need for direct/indirect instruction and supplementary aids and services. 2) Changing the allowable limit of weighted caseloads from 40 to 45 lessen the potential for hiring additional professional staff. - - - 1) Appears to result in more of a need to hire additional</p>	- NA	Implementation issue
			+ A	Language changed to more closely align with current practice.
			+ A	Language changed to more closely align with current practice

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/23/99	Yvonne Santin Dir. of Spec. Ed. (continued)	<p>professional staff due to exceeding weighted caseloads. 2) Even the 5-point rating scale does not reflect the complexity of variances of student needs. This scale still reinforces the pullout model for service delivery.</p> <p><u>Suggestions: (6.1.5.b.B., 6.1.5.b.C, &amp; 6.1.5.b.D.)</u> 1) The effective date of July 1, 2000 for determining caseloads using either rating scale should be postponed for one year. Piloting the proposed rating scale may be necessary to "work out the Kinks" before implementing it statewide to prevent potential negative impacts.</p> <p><u>The present system, however, definitely needs to be changed!!</u></p> <p>Piloting the rating scale system in a large, medium, and small size county next year is suggested. (Wood County Schools would volunteer to be involved in this pilot).</p> <p>2) Rating scales need to reflect more reinforcement of direct instruction in the regular education class service delivery model.</p> <p>Both rating scales reflect the pullout service delivery model, but have removed the language to "trigger" an aide.</p> <p>Devise a rating scale that would reflect the complexity of hiring prior to May. Continually monitoring the system for overseeing the caseload of each special educator and SLP (6.15.b.A.) Is extremely important. Decisions need to be made prior to April to prevent hiring as many "above the formula" staff as possible.</p>	<p>- NA</p> <p>+ N</p> <p>- NA</p> <p>- NA</p> <p>O N</p> <p>- NA</p>	<p>Impact has been studied and carefully considered.</p> <p>Impact has been studied and carefully considered</p> <p>Training issue</p> <p>Implementation issue</p>
6/25/99	Glen DeHaven Dir. of Sp. Ed. Pleasants County Schools	<p>1) I feel that it would be ill-advised to actually enact the portion of Policy 2419 as it relates to Caseloads until a pilot/feasibility student is done as to how personnel is impacted. I would hope that such a pilot would include large, medium and small counties, as our needs will vary. 2) Validation of such a venture is imperative before counties are required to utilize the proposed caseload formula and the above referenced pilot would lend to that validation.</p> <p>3) Should the state department's position remain the same after a pilot study, it appears to me that the utilization of three (3) in determining caseload would best serve the need of Pleasants County.</p> <p>4) Pleasants County stands ready to serve as a pilot site or to assist in any way that we can.</p>	<p>- NA</p> <p>- A</p> <p>O N</p>	<p>Impact had been studied and carefully considered</p> <p>Language changed to more closely align with current practice</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Pamela Kohner Dir. of Sp. Ed. Wirt County Schools	<p>6.1.5.b.M For TBI students, specify "training necessary to implement the students' IEP".</p> <p>6.1.5.b. The numbering system does not make sense when the new caseload process begins.</p> <p>6.1.5.b.A. A system for overseeing the caseload of special educators, etc. should be developed by the WVDE-OSE in cooperation with WVEIS so that procedures are consistent throughout the state.</p> <p>6.1.5.b.B. "Other duties assigned to the special educator" will have to be defined for consistency. For example, planning periods, breakfast/lunch duty, bus duty, recess duty as well as writing IEPs, evaluations, screening, parent training, collaboration, membership on the SAP team, travel.</p> <p>6.1.5.b.C. Specific comments are county-level data are attached for this section. Specific concerns; <b>5 Point Scale</b>; requires 5.5 additional professional personnel in Wirt County (2.5 LD, 1.5 MI, .5 preschool &amp; 1SLP). Wirt County Has run within the state budget and within the state funding formula for personnel for 26 consecutive years. For the first time in 1999, the county has had to RIF professional staff and place many on transfers. If the special education policy required us to hire 5.5 additional professionals, money would have to be provided through the state funding formula. Our declining population would not justify this increase according to the current formula even though it does more accurately reflect the awesome responsibility. <b>3 Point Scale</b>: requires 3 additional positions (1.5 LD, 1.0 SLP, &amp; .5 MI). Hiring even 3 additional professional personnel would be unacceptable unless funding is made available.</p> <p>6.1.5.b.D. Putting this responsibility on the building level administrator is a mistake. They are too busy to do justice to compiling caseload ratings. They do need to be aware of the system so they can appropriately assign duties to special educators and be more considerate of transferring of personnel is a possibility, then caseload information will have to be predicated for the next predicted for the next school year early enough to allow time for employee notifications and due process hearings.</p>	<p>- NA</p> <p>- A</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Training issue</p> <p>Text reformatted</p> <p>Implementation issue</p> <p>Implementation issue</p> <p>Implementation issue</p> <p>Implementation issue</p> <p>Implementation issue</p> <p>Implementation issue</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Brenda Wilson Director of Federal Programs Calhoun County Schools	<p>The new method of determining caseloads will make it necessary for Calhoun County Schools to hire more teachers in order to serve the same students it serves using the old method for determining caseloads. Let me give you two examples. In our preschools, which are combination preschool programs, serving two sets of students, one set on Mondays and Wednesdays and the other on Tuesdays and Thursdays, and making home visits, performing assessments and other professional activities on Fridays. Under the new method of determining caseloads, each teacher would have a weighted caseload of 48, by serving 16 students (8 on Mondays/Wednesdays and 8 on Tuesdays/Thursdays) for a total of 300 minutes per day (600 minutes per week) each. Multiplying 16 times 3 (the rating code for 600 minutes per week) yields 48. Either an exception needs to be made for preschool, or the weighted caseload needs to be increased to 48. In another example, in an elementary school that serves students seven hours per day with seven 45 minute instructional periods and one hour for lunch and recess, a teacher of students with mild disabilities serves students for six of those instructional periods and still has a 45 minute planning period. She does not have recess duties, so she has 5 3/4 hours of instructional time. Assuming 8 students per instructional period, this closely corresponds to a weighted caseload of 48. My strong recommendation is for a weighted caseload of 48 to give school districts flexibility in setting students needs. However, if that is not possible, it is imperative that an exception to the weighted caseload of 40 be made for combination preschool programs so that they can continue functioning as they have in the past.</p>	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement.
6/25/99	Sarah Umberger, Teacher	<p>The heart of the IEP process and of special education is the <u>special</u> and <u>individual</u> support that we have been able to give my students. Although the caseload limits appear to be sensible, they really are fairly irrelevant to me except for the time of year that I have to sit down and fill out IEP forms. <u>However</u>, the lack of regulation for service personnel and limits on classroom size is very scary. Since unmandated personnel are usually the first cut during fiscal crises, we, as special educators, may be left to rely on our wits and classroom management skills in maintaining order in large groups of children who have been diagnosed with enough of a disability that at least some resource time is needed. It is unfair to both students and staff. <u>Please please use some common sense!</u> While the rest of the world is looking for small classes and instructional aides West Virginia is taking away this asset from the students who need it most!</p>	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement.

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Linda Saxton & Judy Hansen, Teachers	<p>We commend the following proposed changes counting percent of time spent on itinerant travel and diagnostic/screening services.</p> <p>While we applaud the above changes, we strongly recommend that teachers' caseloads not be counted by number of students but rather by percent of student's day of special education services (or some formula to reflect true staffing needs). For example, one gifted student may need math acceleration, Language Arts acceleration, and enrichment services. This one student may need the services of three teachers or more important the time of one teacher. Such needs greatly impact the allocated time of gifted teachers.</p>	<p>+ N</p> <p>+ N</p>	
6/25/99	Brenda Shafer, Teacher Debbie Kiem, Teacher Mary Scarborough, Teacher Connie McDowell, Teacher Kathy Reese, Teacher Connie Hilton, Teacher Lewisburg Elementary School	<p>There is no objective process for service personnel aside from the fact that non-mandated positions are usually the first to be cut. Service Personnel decisions on an as needed basis are subjective and able to be interpreted on financial rather than best practice basis. In addition, limiting classroom size (#students per period.) goes against the grain on the purpose of individualized instruction which is the spirit of the IEP process. This lack of limits may only reduce sp. ed. classrooms to places where teachers are reduced to only providing crowd control techniques rather than academic instruction. The weighted caseload concept makes much more sense.</p>	- NA	Implementation issue
6/25/99	Betsy Rawlins Myers, Teacher	<p>Regarding caseload limits &amp; lack of limits; one-on-one &amp; small group instruction is the key to effective service. Without limits &amp; service personnel to deal with the large variety of students, special education classes will basically turn into "holding areas."</p>	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement.
6/25/99	Elizabeth Riggall, Faculty Senate Chair Kanawha County Schools	<p>Unclear— New caseloads - who will pay for additional teachers??? (F) How are aides for self-contained classrooms assigned? Does each IEP have to call for an aide? <u>Need to have this subject clarified!!</u></p>	- NA	Training issue

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Kelli Whytself, Calhoun County Schools	<p>I am most concerned about the changes to the Preschool Special needs aspect of 2419. I am a preschool special needs teacher in Calhoun County, my caseload has been 16, 8 per class with a paraprofessional. My classroom is an integrated classroom with norming peers, I have 8 students with IEP's and 4 norming peers in each class with two groups per week, on Friday's we provide home visits to the parents in which we work on behavior management plans, goals and objectives on the student's IEP, and other needs that the parent may have. This not only helps the students and parents it also provides the much needed home school connection at an early age. The more we reinforce this connection the more success we will have in working with that child and the family in the future. The revision to 2419 will do two things. First it will reduce the class size from 16 to maybe 10 our students are served for 720 minutes per week which would reduce the number of students from 16 to 10. The class size of 8 per day worked, it allowed us to serve students provide individual instruction and also interact with peers. Removing the hours per week for service will allow counties to serve students with IEP's less hours not according to need. The Second is it will remove the requirement of having an aide in the classroom the new language state: Service personnel shall be assigned based upon students' needs (either individually or collectively). If this language stands for the Preschool Special needs program you have in effect eliminated our ability to have a quality preschool program. Counties will remove the aides from our classroom in order to meet state service personnel numbers per county student population. We can't operate a Quality Preschool Classroom with out the aides. The Eligibility for the Preschool program are developmental delays in two or more of the following areas: cognition, fine motor, gross motor, communication, social/emotional/affective development, self-help. We have such a varied needs in our classroom that the aides are necessary, in working with 3-5 year old children the accidents alone would keep one person busy, and if one person is all that the classroom has who is providing instruction. I submit to you that the revision to policy 2419 in regards to preschool remain as they were. West Virginia was a leader in preschool education by requiring a Preschool Special Needs Certification in most cases a Master degree, you have some of the most highly trained teachers teaching the preschool children in this state, and in looking at new Brain Development research this is the most critical time in a child's life for learning. Please let us keep our high quality programs but the children first. 2 Regular Education Part Time assign no more than 15 children; 3 Special Education Program; Separate class 1 As sign at these same preschool teacher s in most rural counties are responsible for, screenings, testing, diagnostic reports, meeting notification, and developing IEP's for the eligible students. This is a lot of paperwork, but our primary focus is on the needs of our preschool students and providing them with a quality</p>	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement.

Date	Individual/ Organization	Comments	Type/ Action	Rationale
6/25/99	Betsy Scott Office of Special Education	<p>Caseloads: (CAP on class size would help). Need to provide some way to prevent over loading of special education classes. The new formula would allow 20 resource students at one time or 8 severe kids at one time with no provision for aide. System may cause adversarial relationships to try to get appropriate services.</p> <p>Pg. 62 &amp; 65 capitalization errors on 8.1.4.b.A &amp; B and 8.1.6a. A&amp;C</p>	<p>- NA</p> <p>- A</p>	<p>Proposed caseload revisions address individual student needs regardless of exceptionality or placement.</p> <p>Typos</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Kenneth Legg, WV School Service Personnel Association	<p>It is our understanding that many of the revisions will bring West Virginia into compliance with the new federal regulations.</p> <p>Our concern is not with this Section 126-16-6, <u>Administration of Services</u>. There is some difficulty in fully understanding the way the policy is organized. Perhaps if we had been able to participate in a public hearing the OSE could have clarified the meaning of some of the proposed revisions.</p> <p>We believe the above section will have a major impact on students, teachers and classroom aides. As we read the changes, it seems that classroom aides will be virtually eliminated in most instances. It is our belief that many special education students are able to function better only because of the assistance of aides in a school setting. A look at past experiences show that the special education aides performs a valuable function in the special education aide performs a valuable function in the special education classroom. Moving cautiously seems to be the thing to do. Perhaps a delay before adoption or implementation of these revisions is needed so that all persons concerned, including teachers, aides, parents and others charged with special education responsibilities, can have a more suitable opportunity for suggestions and clarification. In this way, proposed changes will be better received and defended.</p> <p>15.(b)(B), p 44 - It does not appear the "supplementary aids/services" is adequately defined.</p> <p>1.5B, pp.44-45 We object to the tremendous amount of discretion given to county boards of education in the placement of teacher's aides/paraprofessionals in special education classrooms. AT the present time, we believe that boards of education only utilize teacher's aides/paraprofessionals when required to do so by regulations. IT is clear that financially pressured boards of education will very sparing in the utilization of teachers' aides/paraprofessionals if given complete discretion in staffing. The only check on this tendency would appear to be the pressure parents might bring at the IEP meeting. In our opinion, staffing of teacher's aides/paraprofessionals should be based on objective criteria rather than the perceived financial needs of a county board of education. Although the current ratios of students to teacher and teacher's aide may not be a perfect fit for all circumstances, these ratios provide an objective standard which prevents boards of education from sacrificing the physical and educational needs of special education students to short-term financial considerations.</p>	<p>+ N</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Secretary of State requirement</p> <p>Proposed policy has been studied and carefully considered</p> <p>Defined in glossary</p> <p>Implementation issue</p>

Date	Individual / Organization	Comments	Type/Action	Rationale
6/25/99	Mike Sullivan, Ex. Dir. WVACEEC	<p>Caseload - Council recommends that extensive field testing be conducted to assess the impact of the rating system on CD, Gifted, preschool and timeout services before adopting the proposed rating system.</p> <p>Removal of per-instructional-period caseload may result in an overloaded teaching situation, particularly in adolescent programs or in programs utilizing block scheduling.</p> <p>Some Council members expressed concern that, with the removal of language related to aides, some school system may interpret this as an opportunity to reduce the level of support currently being legitimately provided by service personnel via IEP's.</p> <p>The proposed method for determining caseload leaves the parent no means to observe their child's situation in the instructional setting and then to make a determination about whether or not their child's teacher is within caseload. Assessing caseload compliance becomes a purely administrative process not verifiable by parents.</p> <p>On page 44, ratings "for each student" should be changed to "ratings of services received" to avoid exchanging one label (BD, SLD, MI, etc) for another (Ex. Rating #1, #2, or #3).</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- A</p>	<p>Proposed policy has been studied and carefully considered</p> <p>Implementation issue</p> <p>Implementation issue</p> <p>Other protections available to parents - implementation issue</p> <p>Language changed to reflect intent</p>
6/25/99	Bob Miller Dir. of Sp. Ed. Mineral County Schools	<p>Preschool Special Needs p. 42 (B) Center Based Programs The inclusion of a twelve hour minimum for all students attending a center is a violation of LRE principles. It does not allow for individualization; it mandates a program that is illegal because it is based solely on the "availability of special education placement options". The 12 hour minimum should be eliminated.</p> <p>Private School Placements by Parents p 48 A statement needs to be added that for the purposes of Policy 2419, Home-School students are not considered private school placements. IDEA-97 requires extensive financial manipulations to determine the amount of services required for these placements and consideration of home-school students was not contemplated in the development of the law.</p>	<p>- A</p> <p>- NA</p>	<p>Placement option language deleted to avoid conflict with Section 5.1.5</p> <p>§18-8-1, Exemption B conveys same meaning to home schooled students and those parentally placed in private schools</p>

Date	Individual/ Organization	Comments	Type/ Action	Rationale
6/25/99	Daniel W. Radko, Teacher	In the up coming caseload changes I feel they are to vague. When a Director of Sp. Ed. and the building administrator work on a caseload I feel they will base it on how can we cover the students with the least amount of staff. The almighty buck will rule and the students will suffer. Under the old regulations when working with rating 3 students a teacher knew the old regulations when working with rating 2 students a teacher knew the caseload limits during a class. Now we leave the caseloads up to each county to establish and maintain. It needs to be clearly spelled out and unified through out the state. Forty students per teacher is too many and specific caseload during classes needs to be defined. If this is the best the new regulations can come up with let us return to the past caseload regulations until there are regulations which are more precise.	- NA	Proposed caseload revisions address individual student needs regardless of exceptionality or placement
6/25/99	Debbie Kiem, Teacher	There is <u>no objective</u> process for service personnel aside from the fact that non-mandated positions are usually the first to be cut. Service Personnel decisions on an as needed basis are subjective and able to be interpreted on financial rather than best practice basis. In addition, limiting classroom size (#students per period.) goes against the grain on the purpose of individualized instruction which is the spirit of the IEP process. This lack of limits may only reduce sp. ed. Classrooms to places where teachers are reduced to only providing crowd control techniques rather than academic instruction. The weighted caseload concept makes much more sense.	- NA	Implementation issue
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	Caseload % are confusing to parents. Other Health Impaired is vague. Should give examples such as nurse physician, behavior specialist etc. Don't give the local LEA an out.	- NA	Training issue
6/25/99	Patricia Schaeffer, Parent	p 44 Assignment of caseloads. This is unclear as to how my child's teacher will be assigned a caseload - is it based on #of children, hours of service per week, What? Something has been left out on this page.  P 34 Section # this does <u>not</u> apply to gifted students, who <u>do</u> need to move into a different age group on <u>occasion</u> for acceleration. Please change wording to "special needs/disabled" <u>not</u> include gifted.	- NA  - NA	Training issue  Training issue
6/25/99	Kathryn Wilcox, Teacher	(6.1.5.b.A) page 44 "Each public agency shall establish and maintain a system for overseeing the <b>collective</b> caseload..." Collective students' needs may not be reflected in aggregating the total amount of services required by individual students.	- A	Added language for clarity

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	David Weekley Dir. of Sp. Ed. Ritchie County Schools	The proposed caseload numbers will not be effective. Using this new system, there are many teachers in my county that will exceed current caseload limits. I would suggest an impact study before putting this in place.	- NA	Proposed policy has been studied and carefully considered
6/25/99	David Gaudino, Teacher Marshall County Schools	1) I find nothing in here about how case loads will be determined for gifted children as well as for other disabilities after July 1, 2000. How can we adopt a new policy without the case loads that would go with it. Or if we do not have these yet, then why rush through the rest of the policy. 2) I also object to the possible elimination of services for disabled and or gifted children who elect to attend private/religious schools.	- NA	Training issue
6/25/99	Gerry Sokol Dir. of Sp. Ed. Jefferson County Schools	5.1.4 b. B. (p44) Caseload numbers are confusing. This will also force the LEA's to place minutes per week on the IEP. This can be a litigation nightmare. Return to the old way - it was working.	- NA	Training issue
6/25/99	Bill Ball Dir. of Sp. Ed. Monroe County Schools	The 5 point method of calculating caseloads appears too restrictive. A 3 point rating scale would provide more flexibility with assignment of students. Attached is an actual caseload for a preschool classroom in Monroe County.	- A	Proposed policy has been revised to more closely align with current practice
<b>§126-16-7. Discipline</b>				
6/4/99	Josie McInturff Mercer County Schools	What constitutes "removal"? Is "removal" synonymous with suspension?	O N	
6/9/99	Gary Cross, Principal Ravenswood Elementary	Students in Special Education should be treated just like all other students. They need to understand that having a disability does not permit them to violate rules and policies. Alternative centers should be provided for severely discipline BD students especially when state agencies kick the student out because they cannot handle the problem. Students in this condition should not be in the regular school setting. Too many parents use their child's disability so they cannot be punished for misbehavior.	- NA	Federal requirement
6/9/99	Jennifer Weekley Ritchie County Schools	It's about time we are able to be able to discipline children accordingly.	+ N	
6/15/99	Marilyn Wolfingbarger Nichols, Parent	Page 55 7.1.4.a Dangerous weapon needs to be defined in this document. I realize that every possible item that can be used as a weapon could not be listed, but perhaps it needs to state something about a "verbal or gestural threat". Parents complain that their child can be using something, such as a nail clipper, in an inappropriate manner, but not with a verbal or gestural threat. Please explain this or put a reference to another document so that parents can explain to their children with special needs what is not acceptable behavior etc.	- A	Language added in glossary

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/23/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	More specific guidelines are needed for the determination of change of placement as constituted by multiple suspensions and for the determinations of manifestation. What was too restrictive is now too broad. It will be difficult to monitor.	- NA	Implementation issue
6/25/99	Pamela Kohner, Dir. of Spec. Ed. Wirt County Schools	7.1.1.1 Designate how many "10 school days at a time" are allowed per year.  7.1.1.d.a.A. Designate that the assessment plan for a discipline referral should include a Behavior Disorder specialist and that all FBAs and behavior intervention plans should be completed by a B.D specialist.  7.1.5.a.A. & B. Designate how the hearing officer is assigned, the costs involved & who is responsible for the costs.	- NA - NA - NA	Training issue Training issue Training issue
6/25/99	Elizabeth Rigall, Faculty Senate Chair Kanawha County Schools	7.1.1 (C) - is the student's special education teacher the <u>case manager</u> ? Is this the case manager?? This needs to be clarified - In some high schools case managers' <u>do not</u> get invited to sit in on Disciplinary Processing for students and this <u>needs to be mandated.</u>	- NA	Training issue
6/25/99	Kenneth Legg WV School Service Personnel Association	7.1.7.(a) - We believe that section 126-16-7.1.7.(a) should be amended to make it clear an employee of a public agency can also report a criminal act committed by a student with a disability.	- NA	Federal language
6/25/99	Margi Rockwell	7.1.1. Since the behavior of disabled students (ADD and BD in my experience) is directly affected by their disability, this regulation sets students up for failure. It would more greatly benefit students if there remains a limit to the number of days a disabled student may be suspended within the school year (i.e. 10 cumulative days per year.) Constant negative discipline does nothing to improve behavior after excessive use of suspensions.. Not only does it further frustrate the child beyond the existing frustrations of his/her disability, it also discourages the child until finally he/she becomes another drop-out statistic (as was the case of my own 16 year old son and 4 other ADD, BD students in our acquaintance in Berkeley Co.). Although 7.1.3. allows for this to some degree, there are many areas of behavior that may be (and have been) misinterpreted under this clause by school personnel, this resulting in the inevitable, continual suspensions of disabled students.	- NA	Federal requirement
6/25/99	Bob Miller Dir. of Spec. Ed. Mineral County Schools	Regarding BIP Reviews p 53. e. On the second line you have inserted the word "individually" which seems to help clarify a potentially messy procedure.	+ N	

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	<p>Better definition of a Positive Behavioral Support Plan, Functional Behavioral Analysis is needed.</p> <p>Local LEA should provide documentation that professional writing positive Behavioral Support Plan has training, also functional analysis.</p>	<p>- NA</p> <p>- NA</p>	<p>Training issue</p> <p>Training issue</p>
6/25/99	Gerry Sokol, Dir. of Sp. Ed. Jefferson County Schools	<p>(pp 50-59) Entirely too long. The extra details only adds confusion and makes the process cumbersome.</p> <p>Suggest a 4 step process 1. Discipline is same for all students, 2. Any accumulated days beyond 10 days LEA must provide some instruction. 3. Three or more incidents result in disciplinary action must first have a manifestation IEP meeting. 4. Continue with discipline/have a change of placement. All safe school violations must be handled the same as for non-disabled.</p>	<p>- NA</p> <p>- NA</p>	<p>Federal requirement</p> <p>Federal requirement</p>

Date	Individual / Organization	Comments	Type/Action	Rationale
6/25/99	WV Parent Training and Information	<p>Page 52, 7.1.1.b. correction in language from 10 school days to 0 consecutive school days.</p> <p>7.1.1.d. Change in language to "either before or not later than 10 business days after first removing child for more an 10 school days in a school year or commencing a removal that constitutes a change of placement.</p> <p>Page 53, change language to reflect statute -on 7.1.1.e. to read "if one or more of the team members believe that the modifications are needed, the team shall meet to modify the plan, and its implementation to the extent the team determines necessary.</p> <p>7.1.2.b.B Change in language from "10 business days" to "10 school days".</p> <p>Page 55, 7.1.4.a. Change language to reflect statute language and meaning to read "If a student with a disability carries a dangerous weapon or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school or a school function under jurisdiction of a state or local education agency".</p> <p>7.1.5.a. Add language to read "...he or she disagrees with the manifestation determination or with any decision regarding placement."</p> <p>Page 54, 7.1.2.B.c. Too open ended; language needs added that if there is a change in placement, appropriate evaluations procedures/needed provided data must be followed.</p> <p>7.1.7.a. When added on school property or school sponsored activity.</p>	<p>- NA</p> <p>- NA</p> <p>- A</p> <p>- NA</p> <p>- A</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Exceeds federal requirement</p> <p>Exceeds federal requirement</p> <p>Language added</p> <p>Federal requirement</p> <p>Language added</p> <p>Meets federal requirements</p> <p>Exceeds federal requirements</p> <p>Exceeds federal requirements</p> <p>Meets federal requirements</p> <p>Federal language</p>
6/25/99	Connie Matthews, Parent	<p>7.1.1. Violates federal law by suggesting that a series of removals of ten days are not changes in placement and by stating that school personnel <u>only</u> (with no parent involvement) will make the determination.</p> <p>7.1.1. Violates 20 USC 1415. Authority of school personnel for removals of not more than 10 school days at a time. WVDE gives authority for schools to remove students for more than 20 days in a school year.</p>	<p>- NA</p> <p>- NA</p>	<p>Meets federal requirements</p> <p>Federal language</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Connie Matthews, Parent (continued)	<p>7.1.2. Violates federal law by stating that the parent will simply be given notice of the school's "Decision to Remove" instead of the federally requested prior written notice. Further, it clearly distinguishes between the IEP and the parent - the parent, however, is a member of the IEP team.</p> <p>7.1.5. Requires an expedited hearing to be completed by 45 days. <b>What is "expedited" about that since all hearings are required to be completed within 45 days. (See 8.1.11)</b></p> <p>7.1.5. Provides parties to hearing can wait until two days prior to the hearing to disclose evidence when <b>the federal law requires disclosure five days prior.</b></p>	- A  - NA  - NA  - NA	Language added  Implementation issue  Federal language  Federal language
6/25/99	Susan Barnes Sp. Ed. Coordinator RESA I	p. 54 c. Phrase "as long as parent does not object" is moot because parents are entitled to participation on the IEP Team whose responsibilities are already defined.	- NA	Federal language
<b>§ 126-16-8. Procedural Safeguards</b>				
6/1/99	Karen Linton Davis Center School	Under 8.1.5.C, it states that a surrogate parent should be appointed when the student is a ward of the state. Our students are wards of the state, but the parental rights have not been terminated in most cases. If the parental rights have not been terminated, the parents should be able to provide consent for their child even though they are wards of the state.	- NA	Not specific to a proposed change
6/4/99	Josie McInturff Mercer County Schools	8.1.7c ...to ensure parents have *remove have or change to state, ... ensure that parents have..." (P.65).  8.1.7f... Implement he medication." change to the (p.67)	- A  - A	Typo  Typo
6/8/99	Elaine S. Max Jackson County Schools	8.1.8 - Where is "a"?	- A	Typo
6/9/99	Jennifer Weekley Ritchie County Schools	This area looks fine	+ N	

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/15/99	Marilyn Wolfingbarger Nichols, Parent	<p>Page 59 8.1.1.a A reasonable time needs to have a specific amount of days. The county may say that two days before changing a child's placement is "reasonable". But a parent may believe that at least 5 days, or even 10, is reasonable so that they can evaluate the situation to see if they want a "stay-put" or some type of mediation. Otherwise, a parent may feel forced to take their child out of school, rather than put them in, what they feel, is an inappropriate or unsafe setting.</p> <p>Page 61 H. This sentence is unclear. Unilateral placement needs to be defined.</p> <p>Page 63 e. The sentence "May continue to pursue those evaluations" needs to be changed to "Shall". Otherwise, students who need services will not be evaluated, and they will continue to fail. Parents have the right to refuse, but they should be required to explain exactly why. The county should be required to pursue mediation, or even Due Process, if it is in the best interest of the student.</p> <p>Page 66 b "Who will be attendance" needs to be further clarified. It should include the persons' expertise or title. For example: Mrs. Smith may be a classroom teacher, or a psychologist. The parents need to know. Also there should be an explanation that if the county has other, or additional personnel in attendance that are not listed on the written notice that the parent must agree to their presence, or they will be required to leave the meeting. Parents complain that county's will notify them of perhaps 4 personnel, and then will also bring the county attorney, the Superintendent, etc. The parents feel overwhelmed. The language should state that the parent must be FULLY informed of ALL persons and their titles. The county may bring additional or substitute personnel (For example: Mrs. Smith the psychologist was to come, but is ill so another psychologist is attending) but the parent has the right to agree or disagree with their attendance. If the parent disagrees, then the personnel must leave the meeting, or the county must set up another meeting at a later date, with proper written notice, to include these additional personnel.</p> <p>Page 74 H The language here says "may be asked to sign a confidentiality pledge". A statement about enforcement or some penalty needs to be stated in case the county or the parent violates this confidentiality. I believe this is difficult to enforce. Parents will naturally want to tell their relatives etc. I believe the part about "not be used in evidence in any subsequent due process hearings;" can be retained. But to expect total confidentiality is unenforceable w without spelling out specific penalties.</p> <p>Page 75 C "A party" needs to explain that a parent has the option to go directly to the</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Defined in LEA policies and procedures</p> <p>Training issue</p> <p>Federal language</p> <p>Federal language</p> <p>Exceeds federal requirements</p> <p>Implementation issue</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/15/99	Marilyn Wolfingbarger Nichols (continued)	<p>Page 75 G I would like to see a statement added that information about mediation, such as the number of mediations by county that came to an agreement or were terminated, general issues, etc. be reported to the West Virginia Advisory Council for Exceptional Students and be made available for public review. This could be a good tool to evaluate the mediation process.</p> <p>Page 78 D. "Obtain a written or, at the option of parents, electronic, verbatim record of the hearing," and C. "Obtain the record of the hearing and the findings of fact and decisions at no cost". These 2 statements need to be clarified. One county has said that the parent can choose to have the electronic verbatim record taken, by the county can choose to provide only the written record (which is not verbatim) at no cost. Please explain that the verbatim record, if chosen by the parents, is available to them at no cost.</p> <p>p. 59 8.1.1.a. Please clarify the definition of written notice. Written notice could be a hand written note of the teachers or it could be a formal form.</p> <p>P. 62 8.1. Parental Consent b. Please explain the phrase "When a student with a disability transitions from Part C to Part B." It is confusing.</p> <p>P. 63 C (a)(b) (c) these statements indicate that one MUST make multiple phone calls, send multiple notes, AND visit homes. Please make it and /or as on p. 67 B (b).</p> <p>P. 65 B. (b) Obtain written parental consent for initial evaluation and reevaluation should also include "initial placement."</p> <p>P. 66 B. (b) "who will be in attendance" seems to imply that specific people must be named. Surely, you mean particular positions.</p> <p>( f) he mediation should read the mediation.</p> <p>P. 68 B &amp; C appear to be subordinate to A. (it would make A more clear).</p> <p>P. 86 d. If each public agency needs to have a way of assessing a parent's insurance, it seems that the school system will no longer have to pay for suggestion regarding services. It is the responsibility if the public agency to p. 87 E. "provide the special equipment... required to implement these regulations..." There are procedures in place "assistive technology evaluation) that determine whether certain pieces of equipment</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- A</p> <p>- A</p> <p>- NA</p> <p>- A</p> <p>- A</p> <p>- NA</p> <p>- A</p> <p>- NA</p>	<p>Implementation issue</p> <p>Training issue</p> <p>Training issue</p> <p>Training issue</p> <p>Language added</p> <p>Language added</p> <p>Training issue</p> <p>Typo</p> <p>Reformatted for clarity</p> <p>Implementation issue</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Kanawha County Schools	<p>p. 62 Under Parental Consent (8.1.4) b. It is unclear what the following means: "...transitions from Part C to Part B."</p> <p>Please identify Part C and Part B clearly.</p> <p>Glossary entries should be identified in the text (e.g., by italics, bold).</p>	<ul style="list-style-type: none"> <li>- A</li> <li>- NA</li> <li>- NA</li> </ul>	<p>Training issue</p> <p>Training issue</p> <p>SBE policy format</p>
6/25/99	Kathy Showen, School Psychologist Putnam County Schools	8.1.4.d.c.(b)(c) Change "and" to "or" for requirement of home visits. This is often impractical and unsafe.	- A	Language added
6/25/99	Andrew Cockburn, President Monongalia County Association for Enrichment	a. (The paragraph lettering of this section does not seem to be correct). We support the additions to this section. They will help to standardize access and prevent the use of inappropriate tests to block access.	+ N	
6/25/99	Sandra McQuain Office of Special Education	<p>8.1.10 Mediation Increase the overall time for mediation to take place after receipt to 20 days and decrease the number of days given to a county to forward the initial request to WVDE. Include a statement that mediation must be completed as soon as possible, (and within timeline) so people will understand the timeline is a maximum (can be conducted sooner).</p> <p>P. 76- "paragraph d" should be "e".</p> <p>P. 76- Require the LEA to provide the same notice of a hearing request as parents.</p>	<ul style="list-style-type: none"> <li>- A</li> <li>- A</li> <li>- A</li> </ul>	<p>Language changed</p> <p>Typo</p> <p>Language added</p>
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	pg 62 - last line B. If a parent chooses an IFSP, obtain written informed consent this is very unclear.	- NA	Training issue
6/25/99	Gerry R. Sokol Dir. of Spec. Ed. Jefferson County Schools	8.1.2. a (pp.61) This is overkill for sending notices home. Beyond the initial notices; permission to evaluate and 1 <sup>st</sup> meeting, reevaluation notices, and exit notices is not needed. Statement should be placed on all notices stating that parents can receive a copy of their child's procedural safeguards by contacting their child's school principal.	- NA	Federal requirement

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Connie Matthews, Parent	8.1.3. Notice in Understandable Language Violates federal law which clearly requires that prior written notice and notice of procedural safeguards both must be "written in an easily understandable manner." But Policy 2419 changes that to a different phrase - "language understandable to the general public". Further, notice must be given to students approaching the age of majority and 8.1.3 does not deal appropriately with those disabled students' level of knowledge and reading comprehension.	- NA	Federal language
<b>§126-16-9. Accountability</b>				
6/9/99	Jennifer Weekley Ritchie County Schools	This area looks fine.	+ N	
6/15/99	Marilyn Wolfingbarger Nichols, Parent	<p>Page 85 D "The awarding of monetary reimbursement" needs to be explained. It needs to be addressed by severity of violation, or a violation occurring over an extended period of time, or exactly what type of violation would be awarded a monetary reimbursement.</p> <p>Page 86 d This should include a statement that a parent may request a copy of the billing that is submitted to their private or public insurance so that they can compare it to the services specified in the child's IEP.</p> <p>Page 87 j. This statement (without any written exclusions) appears to imply that a private or home schooled special needs student could participate in extracurricular activities. Yet counties have refused participation to private or home schooled special needs students. This needs to be plainly addressed.</p>	- NA  - NA  - NA	<p>Implementation issue</p> <p>Exceeds federal requirements</p> <p>Training issue</p>
6/17/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	9.1.3.d. OSE needs to provide recommendations for procedures to obtain parental authorization for accessing a parent's public (including Medicaid) or private insurance.	- NA	Implementation issue
6/25/99	Bob Miller Dir. of Sp. Ed. Mineral County Schools	<p><u>Complaint System</u> p 84 (d) (A) An additional phrase at the end of the first sentence, "....such an investigation is necessary" or if requested by both the complainant and the school system. [The complexities of some issues need a free flowing discussion on site to determine if program delivery has actually been met, for example].</p> <p><u>Complaint System</u> p 85 Somewhere between (D) and (e) the federal register requires "Negotiations" but the phrase is left out of Policy 2419. As a requirement it must be included.</p>	- NA  - A	<p>Reflects federal language</p> <p>Language added</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	Need a separate brochure for procedural safeguards. Add local LEA responsibility for offering training to parents annually on Policy 2419.	- NA	Training issue
6/25/99	Gerry R. Sokol Dir. of Spec. Ed. Jefferson County Schools	9.1.2.M (p 81) Monitoring process examines the writing of the IEP not the quality of instruction. Too much emphasis is placed on the depth of the IEP. Too much quality instructional time is lost making sure a comprehensive, well written IEP is in place for the monitoring team. Each year we move further away from instructional time.	O N	
6/25/99	WV Parent Training and Information	Page 86, 9.1.3.d. Sounds as if parent has NO choice; add "for parents who do not object"  Page 84, for a state that has a large population of parents from poor educational backgrounds, a signed written complaint is too unreasonable; it might also violate the ADA for certain populations.  Page 84, A. Too wordy and difficult for most people to understand.	- NA  - NA  - NA	Implementation issue  Federal language  Federal language
<b>§126-16-10. Glossary</b>				
6/4/99	Josie McInturff Mercer County Schools	Should the term "suspension: be in the glossary? Should it be replaced with "removal"?"	- A	Federal language
6/9/99	Jennifer Weekley Ritchie County Schools	OK	+ N	
6/15/99	Karen Layne Kanawha County Schools	Add a new definition for "four core curricular areas". Four core curricular might include written language, which would be five core curricular subjects.	- NA	Implementation issue
6/15/99	Vic Fisher Dir. of Spec. Ed. Harrison County Schools	10.25 Dangerous weapon is not defined in the glossary. Deadly weapon, however, is defined in the glossary. I recommend deleting the definition for deadly weapon and adding a definition for dangerous weapon.	- A	Language added

Date	Individual / Organization	Comments	Type/Action	Rationale
6/15/99	Marilyn Wolfingbarger Nichols, Parent	<p>Page 92 Economically disadvantaged This term is deleted here, yet retained in the eligibility of Exceptional Gifted. It should be kept in this glossary.</p> <p>Page 96 Meeting This definition tells what a meeting "is not". This needs to be defined in more positive terms.</p> <p>Page 106-110 The references to these resources need to be retained so that parents can be informed about other regulations that affect their child's education.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Defined in LEA policies &amp; procedures</p> <p>Federal definition</p> <p>Implementation issue</p>
6/17/99	Lisa Martin Dir. of Spec. Ed. Jackson County Schools	<p>10.39 The definition of ESY is too vague. I understand the attempt to maintain federal language; however, the SEA and LEA are obligated to expand upon that language in order to develop useable policies and procedures. The ESY definition is ambiguous and requires clarification, both for parents and LEAs.</p>	- NA	Federal definition
6/24/99	Kanawha County Schools	<p>Add the definition of : 4 core curriculum areas (pg 15A)</p> <p>pg 3 1.7. Define what is included under educational needs. Define surrogate. A surrogate parent can be....</p>	<p>- NA</p> <p>- NA</p>	<p>Training issue</p> <p>Training issue</p>
6/25/99	Kanawha County Schools	<p>p. 89 10.8 From our perspective the definition of annual goal seems to include that of an objective. Please distinguish.</p> <p>P. 95 Instead of limiting this to Africa Americans &amp; Hispanic, please use an all-inclusive term such as minorities.</p>	<p>- NA</p> <p>- NA</p>	<p>Language added</p> <p>Agreement with OCR</p>
6/25/99	Kanawha County Schools	<p>p. 98 10.68 and p. 99 10.78 One very limited/be consistent.</p> <p>P. 101 10.94 <u>Parent Counseling</u> - IEP is developed for child <u>not</u> parent.</p>	<p>- NA</p> <p>- NA</p>	<p>Federal definition</p> <p>Federal definition</p>
6/25/99	Kathy Showen School Psychologist Putnam County Schools	<p>10.23 Should be counseling "services", not "skills".</p> <p>10.43 FBA add to definition - An FBA focuses on possible purposes the behavior serves for the individual.</p>	<p>- A</p> <p>- NA</p>	<p>Language clarified</p> <p>Training issue</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Pamela Kohner Dir. of Sp. Ed. Wirt County Schools	<p>10.22 Critical Skills: This definition conflicts with the IEP training. In training, a critical skill was supposed to be addressed on each IEP. Students who are receiving Sp. Ed. Services on a consultation basis or those with LRE 1 do not usually have significant deficits in the domains mentioned that could be considered a critical skill.</p> <p>10.109. Specially Designed Instruction: The given definition is vague and leaves specially instruction open to interpretation. It is difficult to distinguish between what modifications or adaptations that might meet the unique needs of an eligible student.</p> <p>Comments: Please cross reference the glossary with page numbers in the text. This would make it easier to find specific citations.</p> <p>An index of topical areas would make it easier to locate and cross reference applicable procedures throughout the document.</p>	<p>- NA</p> <p>- NA</p> <p>- NA</p> <p>- NA</p>	<p>Implementation issue</p> <p>Federal definition</p> <p>Implementation issue</p> <p>SBE format</p>
6/25/99	Mel Woodcock EI Coordinator Appalachian Community Health Center	Put back in resources for families.	- NA	Consider recommendation for future TA document
6/25/99	Bob Miller Dir. of Sp. Ed. Mineral County Schools	Definitions, Special Transportation p.103 The third line, to be politically correct should read, "students with disabilities" and not disabled students.	- A	Language added
6/25/99	WV Parent Training and Information	Define Expedited Hearing	- NA	Implementation issue
6/25/99	Susan Barnes Sp. Ed. Coordinator RESA I	Change definition of "critical" skills p. 105 - delete "must" include.	<p>- NA</p> <p>- A</p>	<p>Established WV terminology</p> <p>Federal language</p>

Date	Individual / Organization	Comments	Type/ Action	Rationale
6/25/99	Connie Matthews, Parent	<p>10.4.3 Functional Behavioral Assessment This is so vague it violates the State Department of Education's duty to assure that all evaluation meets state standards. Where is the standard?</p> <p>10.5.9 Meeting This finally admits what every parent knows - school personnel meet prior to an IEP meeting to develop a proposal. Therefore, prior written notice must be given to the parent before the IEP meeting—"a reasonable time prior to proposing..."</p> <p>10.7.6 Personally Identifiable This is properly described, however, it is the consistent position of the WVDE to deny this information to parents and students.</p> <p>Opportunity to Examine Record has been completely taken out. Policy 2419 violates 34 CFR 300.127 by omitting this legal information. A parent of a student receiving special education services, who relies on Policy 2419, will not know about their rights to reviews records. The only reference I can find is in parental participation that states parents have the right to inspect and review all educational records.</p> <p>Policy 2419 violates 20 USC 1414 and 20 USC 1415 WVDE leaves out the vital legal requirement for all evaluation data to be given to parents before an MDET, EC or IEP meeting.</p> <p>It also leaves out the legal requirement for schools to give parents on request access to their child's educational file prior to an IEP or a hearing.</p> <p>Policy 2419 violates 34 CFR 300.127 WVDE has also taken out the legal requirement for schools to give parents or students notice that they are no longer in need of the student's educational records and are going to destroy them.</p>	<ul style="list-style-type: none"> <li>- NA</li> <li>- NA</li> <li>- NA</li> <li>- NA</li> <li>- NA</li> <li>- NA</li> <li>- NA</li> </ul>	<p>Implementation issue</p> <p>Federal language</p> <p>Comment not reflective of proposed policy change</p> <p>Addressed in Policy 4350</p> <p>Meets federal requirement</p> <p>Addressed in Policy 4350</p> <p>Addressed in Policy 4350</p>

A

Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Lisa Austin

Title: Teacher

Street Address: 610 46<sup>th</sup> St SE City/State/Zip: Charleston, WV 25304

Comments / Suggestions

§126-16-1. General

✓ §126-16-2. Identification / Referral

4.1.3 WA + IA → include but not limited to (add this language to definitions)

4.1.3 R.B.(a) exhibits:

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

✓ §126-16-5. Individualized Education Program Process

5.1.3 a, B. (a) educational

§126-16-6. Administration of Services

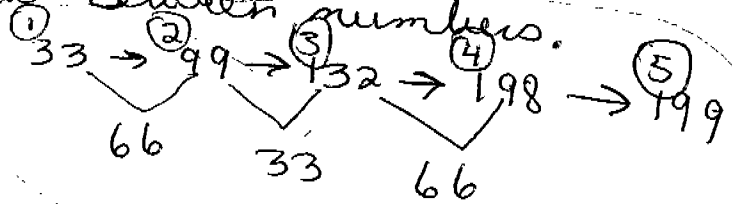
✓ 6.1.3 b ⇒ certification in multi-cat. Classes

Still need class size limits

New Caseloads ⇒ say that ratings are added to reach caseload

Evening  
§126-16-7. Discipline

out spread between numbers.



§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741



**CAROL MORGAN**  
Executive Director

*Regional Education Service Agency*

205 New River Drive  
Beckley, WV 25801  
(304) 256-4712 Fax (304) 256-4683

**FAX COVER SHEET**

TO:

Special Ed. Dept.

ORGANIZATION:

State Dept.

FAX NUMBER:

558-3741

FROM:

Susan Barnes

PAGES INCLUDING COVER:

3

DATE/TIME:

6-25-99

COMMENTS:

PLEASE CALL 304/256-4712 IF YOU DO NOT RECEIVE ALL PAGES

B

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: \_\_\_\_\_

Title: \_\_\_\_\_

Street Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

**Comments / Suggestions**

**§126-16-1. General**

✓ P. 2 Underlined: including ..... this phrase is unnecessary - all students entitled to FAPE

**§126-16-2. Identification / Referral**

✓ **§126-16-3. Evaluation and Reevaluation**

P. 6 Change adaptive behavior to skills is good change  
P. 7 C. may conduct - good allowance for flexibility

**§126-16-4. Eligibility**

✓ P. 12 Behavior Disorder should be changed to match IDEA

**§126-16-5. Individualized Education Program Process**

\* P. 26 b. Adolescent Transition - question "at any age", does not fit, is not clear what is meant.

\* P. 35 a. Critical skills - by definition critical means of, relating to or being a turning point or especially important juncture: Not all students are at turning points and may not have critical skills". The OSE definition of critical is too broad and vague. Please consider revising the definition. Suggestion: essential, fundamentals

**§126-16-6. Administration of Services****✓ §126-16-7. Discipline**

P. 54 c. Phrase "as long as parent does not object" is mute because parents are entitled to participation on the IEP Team whose responsibilities are already defined.

**§126-16-8. Procedural Safeguards****§126-16-9. Accountability****✓ §126-16-10. Glossary**

Change definition of "critical" skills

P. 105 - delete "must" include.

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

**Dr. Dee Bodkins**  
**Director**  
**Building 6, Room 304**  
**1900 Kanawha Boulevard East**  
**Charleston WV 25305-0330**  
**e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)**  
**FAX: (304) 558-3741**

✓  
Monroe County Schools  
PO Box 330  
Union, WV 24983

B

**FAX to Dr. Dee Bodkins, Director**  
Office of Special Education  
WV Department of Education

**FROM: Bill Ball, Monroe County Schools**

**Concerning: Comments on Proposed Policy 2419**

**Total of 4 pages including this cover page.**

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: William L. Ball

Title: Special Education Director, Monroe County Schools

Street Address: PO Box 330

City/State/Zip: Union, WV 24983

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

✓ §126-16-6. Administration of Services *The 5 point method of calculating caseloads appears too restrictive. A 3 point rating scale would provide more flexibility with assignment of students. Attached is an actual caseload for a preschool classroom in Monroe County.*

§126-16-7. Discipline

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

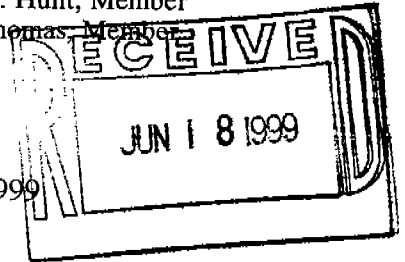
Dr. Dee Bodkins  
Director  
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e-mail: pcarts@access.k12.wv.us  
FAX: (304) 558-3741

# Tyler County Schools

Sandy M. Weese, Superintendent  
Wm. Roger Romine, Asst. Superintendent

P.O. Box 25  
Middlebourne, WV 26149  
(304) 758-2145  
FAX (304) 758-4566

Barry B. Bullman, President  
Fred Glover, Vice-President  
Dr. Ralph H. Boone, Member  
Kenneth R. Hunt, Member  
Larry L. Thomas, Member



June 16, 1999

✓  
Ruth Lilly  
West Virginia Department of Education  
Office of Special Education  
Building 6, Room 304  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0330

Ms. Ruth Lilly:

Recently, I sent to your office a copy of Tyler County Schools Caseload Aggregated Adjustment Impact Study. The packet of information sent to you included a projection for how the new caseload requirements would impact Tyler County Schools with either the three part or five part rating systems.

Personally, I feel the concept of incorporating indirect and direct minutes into teachers' caseload is long over due. Over the past decade, special needs students have become more and more integrated into the regular education classroom. In our county, special needs students in grades K-8 receive inclusive services approximately 90% of their school day. Supplemental reading programs, pre-teach activities, and re-teach activities have become part of the normal school day. Teachers collaborate on a daily, weekly, and monthly basis to ensure that student needs are being met. The existing caseload formula does not provide an avenue for these activities to be weighted into the process.

After careful review of the data provided by our special education staff I feel confident in saying that the five point scale is an accurate account of the special education staffing needs in Tyler County. The additional teachers identified through projected caseloads for the 1999-2000 school year would provide our schools with enough staff to facilitate small group inclusive settings, pullout and resource settings for pre-teach and re-teach activities, and self-contained settings for students who require more intensive instructional modifications. Tyler County Schools projects an increase of at least four maybe five additional full time special education teachers. However, the costs associated with such an increase in staffing would create an extreme burden on our county's fiscal budget. Ultimately programs in other areas would be greatly

effected.

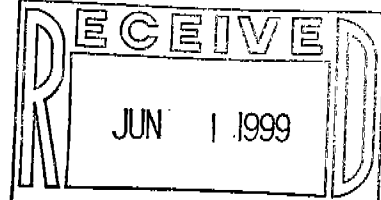
In respect to the three point scale, I feel this proposed plan is a reasonable compromise between the present caseload system and the proposed five point scale. The three point scale targeted programs in our county that we feel are at a point of distress and in the need of additional personnel. This plan would see an increase of one and a half special education teachers.

In closing, a shift in philosophy, best practices, and the obvious lack of progression has forced the special education pendulum to swing toward full integration and away from self-contained settings. My concern, is that once again the delivery of services will not address students individual needs but will simply shift to the services that are available. Ultimately, staffing restraints will become the driving force of what services are available. The old adage applies, one teacher cannot provide resource and inclusive services at the same time into different settings. In the past, special education students were placed in a self-contained setting because that was how the program was designed. In the future, students will be placed in inclusive settings, regardless of individual needs, because that is where the services will be available. Only through additional staffing will the special education pendulum ever find its way to land in the middle, the best of both worlds! A change in the present caseload formula is definitely in order, at what cost is the real question!

Sincerely,



James G. Brown  
Special Education Director



8.2. Expiration Date. - All licenses which reflect an expiration date shall expire June 30 of the last year of their validity irrespective of the date of issuance (W.V. Code §18A-3-2).

### **126-136-9. Assignment of Professional Personnel.**

9.1. Educator. - An educator who is employed within the public school system of the state shall hold a valid license for the specializations and grade levels to which he/she is assigned (W.V. Code §18A-3-2).

9.2. Assignment One Grade Above or Below. - Effective July 1, 1998, professional personnel newly assigned to a position will not be allowed to teach one grade level above or below the grade levels reflected on their license. However, an educator currently assigned to teach within the specialization(s) reflected on her/his license who is assigned one grade above or below the grade levels reflected for that specialization shall be issued, upon recommendation from the county superintendent, an Authorization to continue to teach at that grade level. The Authorization is valid only within the county from which the recommendation was issued.

9.3. Adult Programs. - An educator working in a program for adults who are seeking a high school diploma or warranty retraining must hold a valid license for a like assignment in a public school adolescent education program.

9.4. Home/Hospital Instruction. - An educator providing temporary home teaching or visiting teacher services, whether regular and/or special education, must hold a teaching license with an endorsement appropriate to the grade level of instruction.

9.5. Special Education Program: Out-of-School Environment.- An educator providing home teaching or visiting teacher services to eligible special education students in an Out-of-School Environment placement alternative as identified in the student's Individualized Education Program must hold a valid license with an endorsement appropriate for the exceptionality of the student(s) being served.

9.6. Special Education. - Effective July 1, 1999, personnel newly assigned to a position working with special education students may: 1) deliver the instructional goals and objectives in any general or vocational specialization for which they hold licensure; or 2) deliver the instructional goals and objectives to those special education students who are not included in the regular classroom provided that the special education teacher collaborates with an educator licensed in the general or vocational specialization for which instruction is provided; or 3) collaborate with the general or vocational teacher when special education students are included in the regular classroom.

9.7. Curriculum Enrichment. - An individual may provide, by reason of educational or practical background and employment records, curriculum enrichment on a part-time or temporary basis in highly specialized areas. These program areas include the performing arts, professions, and vocational specializations. The board of education may utilize such personnel in accordance with a locally adopted policy provided such personnel do not replace a licensed educator.

9.8. Assignment of Elementary or Multisubjects Teachers. -Effective July 1, 1998, personnel licensed for elementary education or multi-subjects may not be newly assigned to teach specific content specializations (e.g., mathematics, English language arts, music) in a departmentalized seventh and/or eighth grade unless the educator holds appropriate licensure to teach the content specialization or exhibits subject matter competence to deliver the instructional goals and objectives approved by the State Board. The educator who exhibits subject matter competence shall be issued, upon recommendation from the county superintendent, an Authorization to continue to teach this specialization. In addition, an educator who is currently assigned to teach a single subject within the elementary curriculum in a departmentalized seventh and/or eighth grade based on a previous State Board policy shall be issued, upon recommendation from the county superintendent, an Authorization to continue to teach this specialization. In both cases, the Authorization is valid only within the county from which the recommendation was issued. An elementary education teacher may be assigned to a departmentalized setting below seventh grade without securing an Authorization.

9.9. Assignment of Long-Term Substitutes. - A substitute who fills a position for more than 30 days (long-term) is required to hold a license with an endorsement appropriate for the assignment. A county superintendent who is unable to staff a long-term substitute position with a qualified educator shall seek approval from the local board of education to request a waiver from the state superintendent of schools. The written waiver request must indicate the efforts that were made to employ a fully qualified candidate. The state superintendent of schools may grant the waiver if the circumstances warrant such approval. However, the county superintendent must continue to seek the services of an educator with the appropriate endorsement(s) and place this individual in the position at a time determined to be in the best interest of the students.

9.10. Assignment of Short-Term Substitutes. - A substitute who fills a position for 30 days or less (short-term) may substitute in a specialization not reflected on the license.

9.11. Contracted or RESA Services. - An educator providing contracted services or services through a Regional Education Service Agency (RESA) must hold the same licensure required for an educator employed by a board of education.

9.12. Assignment of Speech/Language Pathologists, Speech and Hearing Therapists and Educational Audiologists. - An educator who holds licensure as a speech/language pathologist, grade K-12, speech and hearing therapy, grades 1-12, or educational audiologist, grades K-12, may be assigned to provide services to students, birth through adult, provided he/she secures an Authorization for grades Birth-Adult. The Authorization shall be valid in any county in West Virginia.

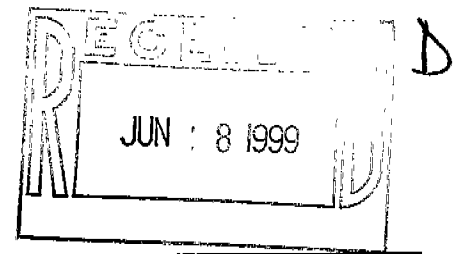
#### **§126.136.10. Out-of-State Applicants.**

10.1. Interstate Contract Concerning Qualifications of Educational Personnel. - West Virginia is a member of the Interstate Contract Administrators Association which promotes the mobility of educators across state and national lines. Although West Virginia has entered into contracts with selected states for teaching, student support services, administrative and vocational personnel,

# Pleasants County Schools

Office of the Superintendent

202 Fairview Drive  
St. Marys, WV 26170  
Telephone: 304.684.2215  
Facsimile: 304.684.3569



June 16, 1999

Dee Bodkins, Ed.D.  
Director  
Office of Special Education  
West Virginia Department of Education  
Building 6  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0330

Dear Dr. Bodkins,

Thank you for taking the time to talk to me this morning. As a result of our conversation, I believe that it is necessary that I provide you with the following comments relative to **Policy 2419 proposed regulations as it relates to Section (126-16-6) Caseloads - Categorical and Placement Specific.**

After having met with the Special Education Directors in RESA V on Tuesday, June 15, 1999, reviewing contact minutes within my own county and having talked with you, I would like to share with you the following:

- 1. I feel that it would be ill-advised to actually enact the portion of Policy 2419 as it relates to Caseloads until a pilot/feasibility study is done as to how personnel is impacted. I would hope that such a pilot would include large, medium and small counties, as our needs will vary.*
- 2. Validation of such a venture is imperative before counties are required to utilize the proposed caseload formula and the above referenced pilot would lend to that validation.*

3. *Should the state department's position remain the same after a pilot study, it appears to me that the utilization of three (3) in determining caseloads would best serve the needs of Pleasants County.*
4. *Pleasants County stands ready to serve as a pilot site or to assist in any way that we can.*

As always, thank you for your assistance in responding to my questions and your constant offers for technical assistance.

Sincerely,



Glen M. DeHaven  
Director of Special Education 7/1/99

cc: Mr. Hackworth  
Mr. Roush

2

✓

**-MEMORANDUM-**

**TO:** Dee  
**FROM:** Annette  
**RE:** Comments of 2419  
**DATE:** May 19, 1999

**Regarding the use of the same requirements for team membership for reevaluations and initial evaluations and the IEP Team (5.1.2.), page 6:**

IDEA both in Statute and Regulations make a distinction between the IEP Team and those involved in the initial and reevaluation of a child. The latter includes the phrase "...the IEP team and other qualified individuals.." It is my understanding that this would include teachers of VI and HI at initial and reevaluations for students with sufficient sensory loss to adversely affect their educational performance regardless of their identified exceptionality. Note Sections §300.321 and §300.533 (a).

Thanks.

C

Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kan Co Sch

Title: Joyce M Carter / Specialist

Street Address: 1029 Nease City/State/Zip: Chas WV 25312

Dr.

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

✓ §126-16-3. Evaluation and Reevaluation

Clarify - Pg 7 ~~7~~ B-c - how that can be accomplished/documentated

→ pg 8 <sup>4.1.1</sup> a - Clarify - 3 on professionals means how many

✓ §126-16-4. Eligibility

• Clarify pg 18 A - range of IQ 70-75 what determines <sub>wh</sub>

~~pg 26 5.1.3 - a~~

• pg 26 5.1.3 - a ⇒ Clarify - Does this mean as limited as WL - ex "LD" = "WL" - <sub>only</sub>

✓ §126-16-5. Individualized Education Program Process

~~ex~~ Does this mean all IEP <sub>Goal/Obj</sub> reflect WL?

pg 30 i Clarify - Teachers (reg/sep) need to be able to utilize "sign lang" for example.

j Clarify - device by "Brand name?"

Clarify pg 32 - difference between <sup>A</sup>b/c

§126-16-6. Administration of Services

§126-16-7. Discipline

✓ 22  
Pg 22 a  
Clarify - what  
would be ~~an~~  
examples of  
special ~~cases~~  
considerations

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

Should not find!

Clarify: elig for students  
with MI level of  
consideration of educational  
assessment (as written only  
need to consider I& +  
adapature)

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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C

Policy 2419: Regulations for the Education of Exceptional Students

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Individual/Organization: Kan Co Sch

Title: Joyce M Carter / Specialist

Street Address: 1029 Nease City/State/Zip: Chas Wv 25312

Comments / Suggestions

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§126-16-2. Identification / Referral

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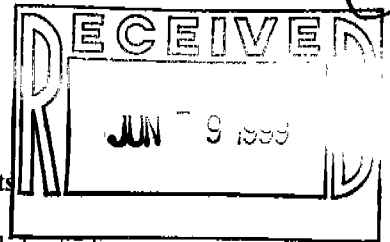
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Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Ravenswood Grade

Title: Gary L. Cross, Principal of R.G.S.

Street Address: Rt 2 Box 22A City/State/Zip: Ravenswood, WV 26164

Comments / Suggestions

§126-16-1. General ✓

A major concern is the length and time to complete the Regulation requirements in Policy 2419. We have had many parents complain about this process. Too much paper work.

✓ §126-16-2. Identification / Referral Cumbersome + burdensome - Too long of a process. When a person is referred, the student has had numerous interventions, instructions & methods of numerous ways have already been tried and teachers feel something needs to be done immediately.

✓ §126-16-3. Evaluation and Reevaluation Under this section, 80 days is too long. Parents feel it takes too long to get a child placed in the program. It is recommended that the process be shortened and time shortened to 45 days from beginning to end. It is also recommended that additional psychologists be hired to meet the demands of evaluation + reevaluation. Additional evaluators need to be hired to do screening + other testing. Sp Ed teachers are teaching and it is impossible to get the required testing completed.

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

Sp Ed Separate class should not have more than 10 students.

✓ §126-16-6. Administration of Services ✓

Students with IQ's below 80 should be considered for Mentally Impaired Services. These students usually drop in ability over a very short period of time. These children need help and they are limited as to what they can do.

Weighted caseloads shall not exceed 30. Forty is too, too many!!!

§126-16-7. Discipline ✓

Students in Special Ed should be treated just like all other students. They need to understand that having a disability does not permit them to violate rules & policies. Alternative Centers should be provided for severely disruptive B.D. students especially when state agencies kick the student out because they cannot handle the problem. Students in this condition should not be in the regular school setting.

§126-16-8. Procedural Safeguards

"Too many parents use their child's disability of any they cannot be punished for misbehavior."

§126-16-9. Accountability

§126-16-10. Glossary

✓ Sp Ed classes should not be weighted!! If a classroom has a certain number of students, it should be that number not a portion of.

if a student consider general

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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Director  
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Charleston WV 25305-0330  
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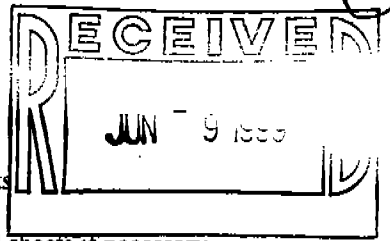
Please turn over on back

✓ Students being served should be counted by each specialist that services the child. Duplicated & unduplicated should not be considered. If a teacher (Sp Ed) services a child, they should be able to count that child on their caseload. A misrepresentation of the actual number of students being served is reported because of the fact some other specialist is serving the child and its counted on that person's caseload. Totally unfair and misrepresented as far as services go to children. For example, we have our L.D teacher ~~with~~ <sup>with</sup> 31 students on her caseload however, this is inaccurate because she services 31 L.D students plus 5 behavioral disordered students for L.D and one other health impaired student being served by L.D, and one MI student for L.D which actually makes a total of 38 students being served by this teacher. Speech is ridiculous. Fifty students is unreasonable.

---

We need trained evaluators for Special Education.  
Our Sp Ed teachers are teaching and do not have time to screen and/or evaluate students.

---



Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Ravenswood Grade

Title: Gary L. Cross, Principal of R.G.S.

Street Address: Rt 2 Box 22A City/State/Zip: Ravenswood, WV 26164

Comments / Suggestions

§126-16-1. General ✓

A major concern is the length and time to complete the Regulation requirements in Policy 2419. We have had many parents complain about this process. Too much paper work.

✓ §126-16-2. Identification / Referral Cumbersome + burdensome - Too long of a process. When a person is referred, the student has had numerous interventions, instructional methods of numerous ways have already been tried and teachers feel something needs to be done immediately

✓ §126-16-3. Evaluation and Reevaluation Under this section, 80 days is too long. Parents feel it takes too long to get a child placed in the program. It is recommended that the process be shortened and time shortened to 45 days from beginning to end. It is also recommended that additional psychologists be hired to meet the demands of evaluation + reevaluation. Additional evaluators

§126-16-4. Eligibility need to be hired to do screening + other testing. Sp Ed teachers are teaching and it is impossible to get the required testing completed.

§126-16-5. Individualized Education Program Process

Sp Ed Separate class should not have more than 10 students.

§126-16-6. Administration of Services ✓

Students with IQ's below 80 should be considered for Mentally Impaired Services. These students usually drop in ability over a very short period of time. These children need help and they are limited as to what they can do.

Weighted caseloads shall not exceed 30. Forty is too, too many!!!

§126-16-7. Discipline ✓

Students in Special Ed should be treated just like all other students. They need to understand that having a disability does not permit them to violate rules & policies. Alternative Centers should be provided for severely disruptive B.D. students especially when state agencies kick the student out because they cannot handle the problem. Students in this condition should not be in the regular school setting.

§126-16-8. Procedural Safeguards

"Too many parents use their child's disability of any they cannot be punished for misbehavior."

§126-16-9. Accountability

§126-16-10. Glossary

✓ Sp Ed classes should not be weighted!! If a classroom has a certain number of students, it should be that number not a portion of.

→ for insitated consider general

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

Please turn over on back

✓ Students being served should be counted by each specialist that services the child. Duplicated & unduplicated should not be considered. If a teacher (Sp Ed) services a child, they should be able to count that child on their caseload. A misrepresentation of the actual number of students being served is reported because of the fact some other specialist is serving the child and its counted on that person's caseload; Totally unfair and misrepresented as far as services go to children. For example, we have our L.D. teacher ~~with~~ <sup>with</sup> 31 students on her caseload however, this is inaccurate because she services 31 L.D. students plus 5 behavioral disordered students for L.D. and one other health impaired student being served by L.D., and one M.I. student for L.D. which actually makes a total of 38 students being served by this teacher. Speech is ridiculous. Fifty students is unreasonable.

---

We need trained evaluators for Special Education.  
Our Sp Ed teachers are teaching and do not have time to Screen and/or Evaluate students.

---

✓ Students being served should be counted by each specialist that services the child. Duplicated & unduplicated should not be considered. If a teacher (Sp Ed) services a child, they should be able to count that child on their caseload. A misrepresentation of the actual number of students being served is reported because of the fact some other specialist is serving the child and its counted on that person's caseload. Totally unfair and misrepresented as far as services go to children. For example, we have our L.D teacher ~~has~~ <sup>with</sup> 31 students on her caseload however, this is inaccurate because she services 31 L.D students plus 5 behavioral disordered students for L.D and one other health impaired student being served by L.D, and one MI student for L.D which actually makes a total of 38 students being served by this teacher. Speech is ridiculous. Fifty students is unreasonable.

---

We need trained evaluators for Special Education.  
Our Sp Ed teachers are teaching and do not have time to screen and/or evaluate students.

---

JUN 23

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Andrew Cockburn, PhD

Title: President, MCAE

Street Address: 970 Stewart ST City/State/Zip: Morgantown, WV 26505

Comments / Suggestions see attached

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

**§126-16-6. Administration of Services**

**§126-16-7. Discipline**

**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

**§126-16-10. Glossary**

Complete response form by listing each section of the policy.

**Return comments by June 25, 1999 to:**

**Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741**

## **Policy 2419: Regulation for the Education of Exceptional Students**

**Individual/Organization:** Andrew Cockburn, PhD *mc*

**Title:** President, Monongalia County Association for Enrichment

**Street Address:** 970 Stewart ST, Morgantown, WV 26505

Note: Monongalia County Association for Enrichment (MCAE) is the primary organization representing parents and teachers of gifted children in Monongalia County. MCAE has 100 paid members, which represents half of the parents and teachers of gifted in Monongalia County. These comments have been reviewed by the MCAE board and represent the official position of MCAE. They are restricted to the sections of policy 2419 relating to gifted education. MCAE does not take a position on other sections of 2419.

### **Comments/Suggestions**

#### **§126-16-2 Identification/Referral**

✓ 2.1 We support the change that students should be identified and referred “even if they are advancing from grade to grade”. Many gifted students require acceleration. Merely advancing from grade to grade is not true success for gifted students.

2.1.3 a. We support the change in this section. The previous wording would exclude gifted.

#### ✓ **§126-16-3 Evaluation and Reevaluation**

3.1.3 c. A. We support the requirement to include input from parents and teachers. Although the use of standardized tests as the sole gatekeeper for gifted education is illegal, several West Virginia counties have used them for this purpose.

#### ✓ **§126-16-4 Eligibility**

4.1 We support the change in this section. The deletion of the wording “the determined exceptionality adversely affects the student’s educational performance” makes it clear that gifted children are included.

4.1.2 a. We support the addition of parent input.

4.1.2 b. A. We support the deletion of (b).

4.1.3 f. A. (a) We strongly oppose the changes in this section. Apparently these considerations were moved to 4.1.3 f. D. (b). However, the substitution of “historically under-represented gifted population” excludes many children whose primary language is

not English. For example, at some schools in Monongalia County more than 25% of the children are non-native English speakers, including Arabic, Chinese, Hindi, Japanese, and many other nationalities. Most of these would not qualify under the definition of "historically under-represented", however the language problem still exists. We request the addition of the phrase "and children whose primary language is not English" to 4.1.3 f. D. (b) or to the definition in section 126.16.10.47.

4.1.3 f. D. (c), (d), (e) We strongly oppose these changes, especially the removal of the annual review of the four-year plan in high school. These are years of great intellectual, social, and emotional change. It is impossible to develop a four-year plan that will not require some review or modification. This change also removes the best mechanism for ensuring accountability for the performance of gifted students in high school. The simplest way of solving this problem would be to extend special education coverage to include services to gifted children in high school. We understand that this might require a change in the West Virginia Code, and therefore be beyond the authority of the Department of Education. As an absolute minimum, however, the annual reviews should be retained.

#### **§126-16-5 Individualized Education Program Process ✓**

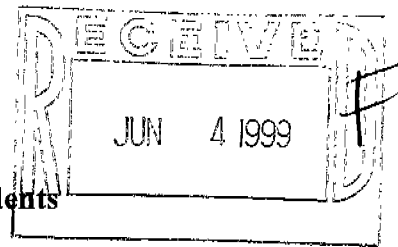
5.1.4 a. We recommend changing this section to read "The IEP for a gifted student shall include acceleration as the primary consideration and, when appropriate, include the effects of acceleration on the student's graduation." Similar language was present in a previous version.

5.1.5 e. A. and B. We strongly object to the implication that the Department of Education discourages grouping of gifted students. In section A "disabled" should be substituted for "exceptional". In section B "disability" should be substituted for "exceptionality" and the phrase discussing gifted removed. Grouping of gifted students outside of the regular classroom is an absolute requirement for many acceleration options.

126-16-5 h. H. We very strongly object to this section as worded. It should be made clear that this applies only to disabled students, not to gifted students. Removal from the classroom "solely because of needed modifications in the general curriculum" may be necessary for some forms of acceleration.

#### **§126-16-8 Procedural Safeguards ✓**

a. (The paragraph lettering of this section does not seem to be correct) We support the additions to this section. They will help to standardize access and prevent the use of inappropriate tests to block access.



**Policy 2419: Regulations for the Education of Exceptional Students**

**Individual/Organization:** Vic Fisher, Harrison County Board of Education

**Title:** Supervisor, Pupil Services

**Street Address:** Post Office Box 1370 City/State/Zip: Clarksburg, WV 26302-1370

**Comments/Suggestions**

**§ 126-16-4. Eligibility** ✓

4.1.3, f, D, (a) When a student . . .

The purpose of allowing for 1.0 standard error of measurement appears to be to allow for the potential inaccuracies in testing, the additional requirement of 'documenting the potential to achieve' seems unnecessary as well as very impractical and awkward to implement. I suggest deletion of this entire section (a).

4.1.3, f, D, (b) If determined that . . .

This is very vague and could lead to wide differences in interpretations across the state. Shouldn't the criteria be the same statewide? What is the criteria? Allowing policies and procedures to differ between McDowell and Hancock Counties could be discriminating as well as politically unsavory. I would very much like the state department of education to clearly specify this criteria.

4.1.3, f, D, (d) If the student . . .

I am glad to see that four year plans are limited to exceptional gifted. The current method has caused considerable confusion and misunderstanding in our county.

**§ 126-16-5. Individualized Education Program Process** ✓

5.1.5, g. The student's (age 3-5) . . .

I believe this section is unnecessary, confusing and should be deleted. I believe the current definitions of RE:FT, RE:PT, SE:SC and SE:RF are sufficient.

Including and listing private and parochial options may suggest to parents and the IEP Team that these are required placement options.

§ 126-16-6. Administration of Services ✓

6.1.5, b. The following process for determining caseloads shall become effective July 1, 2000.

I do not believe this section should be included until its impact on professional and service personnel staffing levels can be examined further.

§ 126-16-7. Discipline ✓

7.1.4, a. If a student . . .

and

✓ § 126-16-10 Glossary 10.25

Dangerous weapon is not defined in the glossary. Deadly weapon, however, is defined in the glossary. I recommend deleting the definition for deadly weapon and adding a definition for dangerous weapon.

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Anne S. Fishkin, Ph.D., Marshall University Graduate College

Title: Research Specialist, Director, Community Clinical Services Center

Street Address: 100 Angus E. Peyton Drive City, State/Zip: South Charleston, WV 25303-1600

Comments/ Suggestions

§126-16-1

✓ §126-16-2 - Identification/ Referral: Comment: Section 126CSR16. F. Gifted, B. (a) Intellectual Ability. The proposed revision to eliminate section (a) (B), consideration of verbal or nonverbal scales of a comprehensive test of intellectual ability is highly inappropriate. It will make the WV regulations, which are already one of the more restrictive policies for gifted services in the country, more restrictive. It will reduce the possibility of gifted identification for those children, for example, who have highly verbal abilities but who are reflective and slow, and do not earn bonus points for speed on the Wechsler Intelligence Scale for Children-III. The WISC-III is a much more highly speeded test in the performance IQ scales than the WISC-R. My research, (see Fishkin, Kampsnider, & Silverman, 1997) shows support that the WISC-III full scale score fails to identify children who show high giftedness, for example, on the Verbal Comprehension Index scale.

✓ According to J. Sattler, Assessment of Children, it is inappropriate to rely only upon a full scale score for gifted youth or any youth who have highly disparate scores. The full scale, or composite score does not appropriately reflect a child's abilities when they are very uneven. This holds true for many highly gifted youth and for children who are gifted and learning disabled or with behavior disorders.

Suggestions: 1) See WV Association for the Gifted policy statement on Gifted Identification.

✓ 2) Keep Section (B) and modify as follows: Intellectual functioning 2.0 or more standard deviations above the mean, with consideration of 1.0 standard error of measurement at the 68% confidence interval on a verbal or nonverbal scale of a comprehensive test of intellectual ability ~~if the student is disabled or economically disadvantaged, or if the student's primary language is other than English;~~ and

✓ I would suggest that the Verbal Comprehension Index scale be considered as well as the Verbal IQ scale of the WISC-III, or the Verbal Reasoning Scale of the Stanford Binet. The consideration of the verbal or performance scale as an eligibility measure should be available to any child who shows such high scores. This may make gifted eligibility accessible also to minority children who are not being adequately identified.

§126-16-3.

§126-16-4.

§126-16-5

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: pcarte@access.k12.wv.us  
FAX: (304) 558-3741

**From:** Fishkin, Anne <AFishkin@MARSHALL.EDU>  
**To:** 'pcarte@access.k12.wv.us' <pcarte@access.k12.wv.us>  
**Date:** Friday, June 25, 1999 5:05 PM  
**Subject:** Comments on Policy 2419 - Gifted Eligibility - Comments attached

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Dr. Dee Bodkins,

I faxed the attached comments to your office, today, June 25.

I also attached a paper relevant to these issues which I presented at the National Association for Gifted Children with Dr. John Kampsnyder, and Linda Silverman.

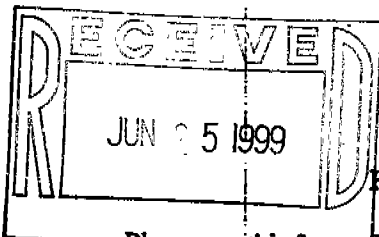
I would be glad to supply further documentation from my own research and that of others to support my stand that the proposed revision pertaining to gifted eligibility is not appropriate, and will make identification of gifted youth in WV more restrictive. I believe the proposed recommendations may also create further difficulty with identifying minority gifted youth.

Cordially,  
Anne Fishkin

\*\*\*\*\*

Anne S. Fishkin, Ph.D., Research Specialist  
Director, Community Clinical Services Center  
Marshall University Graduate College  
100 Angus E. Peyton Drive  
South Charleston, WV 25303  
1-800-642-9842, ext. 2078, or 304-766-2850  
Fax: 304-746-1942  
e-mail: [afishkin@marshall.edu](mailto:afishkin@marshall.edu)

<<GT2419CM.DOC>>



9

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

David N. Gaudino, Ed. D.  
**Individual/Organization:** Marshall County Schools  
**Title:** Member of West Virginia Gifted Association and  
 Member of the State Department of Education's Task Force  
 for Gifted Education Reviewing/developing new 2419 Regulations  
**Street Address:** R. D. #4 Box 174 **City/State/Zip:** Wheeling, WV 26003

**Comments / Suggestions**

✓ **§126-16-1. General**

As a member of the task force that reviewed the gifted sections of Policy 2419 I was surprised with the changes in this document was were not discussed at any of our meetings. In a time when gifted children are are hav ing more and more needs-especially in the affective domain-this document seems to further cut gifted services-especially in the affective domain. The increase in suicides among gifted children and the schoolshootings, conducted by many may unhappy gifted children provide evidence that gifted children need service beyond the four basic math sumjects

~~§126-16-2. Identification & Referral~~

and including services beyond just honors classes and accelerated classes for grades 9-12.

**§126-16-3. Evaluation and Reevaluation**

✓ **§126-16-4. Eligibility**

1) Eliminating section B on page 14 of this document will eliminate children who need servises who have a number of disadvantages-especially students who econpmically disadvantaged. In addition the addition of b) on page 15 will not make up this difference because economically disadvantaged is not included in the paragraph.

✓ 2) I strongly disagree with the addition of the phrase added in parts A,B & C on the top of the page on page 15 saying "in one or more of the four core

~~§126-16-5. Individualized Education Program Process~~

curriculum areas." This will not require schools to provide the affective servides that many gifted children need. It also does not recognize the needs for creativity, counseling and the arts in a gifted child's IEP.

3) In part C. for exceptional gifted a part (e) should be added to cover economically disadvantaged under exceptional gifted.

4) By eliminating paragraph e) on page 16, schools will not be required to annually update and review the 4 year plan. This is necessary and required by the education reform act of 1989 (SB 1).

5) The new added paragraph d) does not require the exceptional gifted student's IEP to be updated yearly. This needs tro be clarified.

**§126-16-6. Administration of Services**

- ✓ 1) I find nothing in here about how case loads will be determined for gifted children as well as for other disabilities after Jul 1, 2000. How can we adopt a new policy without the case loads that would go with it. Or if we do not have these yet, then why rush through the rest of the policy.
- ✓ 2) I also object to the possible elimination of services for disabled and or gifted children who elect to attend private/religious schools.

**§126-16-7. Discipline**

**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

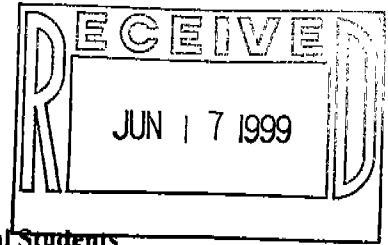
**§126-16-10. Glossary**

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

**Dr. Dee Bodkins**  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

or  
dbodkins@access  
.k12.wv.us



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Beverly Griffith  
Title: Special Education Teacher - Mentally Impaired Students  
Street Address: 1018 12<sup>th</sup> Avenue City/State/Zip: Vienna, W.V. 26105

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

✓ I am concerned that you now have only one classification for mental impairments. I suggest that this part of the policy be left as it was. To place all levels of mental impairments into one classroom would not be beneficial to anyone.

**§126-16-5. Individualized Education Program Process**

✓  
§126-16-6. Administration of Services

I suggest that you leave the caseload for mentally impaired as it was in the old policy. An aide should be determined on need as well as on number of students in a class. And who will determine if a class needs an aide? - the

§126-16-7. Discipline

same people controlling the purse strings?? If so, the needs of the children will never be met!

§126-16-8. Procedural Safeguards

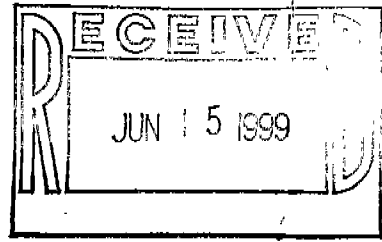
§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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Director  
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1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741



H

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Connie Helvey - Fred Helvey

Title: Grandparents of Special Ed. Child

Street Address: HC83 Box 134 City/State/Zip: Union, W. Va. 24983

**Comments / Suggestions**

✓ §126-16-1. General we are concerned about the caseloads for special education classes, also the grouping of a wide range of ages in the same classroom. we feel this would be a detriment for the children in this type of setting. They require so much special attention which they would not get if the classes are large. also it would seem this would be frustrating and discouraging for the teachers.

~~§126-16-2. Identification/Referral~~

§126-16-3. Evaluation and Reevaluation

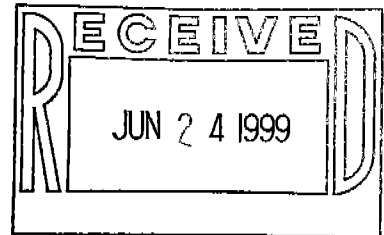
§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

H

1109 Galway Circle  
Charleston, WV 25314  
July 22, 1999

Dr. Dee Botkin  
Bldg6, Room 304  
1900 Kanawha Blvd E.  
WV State Dep't of Education  
Charleston, WV 25305-0330



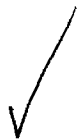
Dear Dr. Botkin,

As teachers of gifted we are concerned about the purposed changes in Policy 2419 under eligibility (126-16-4.1.3f(B)). We need to continue to use a subtest (verbal or performance) score, rather than the full scale IQ to qualify a student that is also (1) otherwise disabled, etc. (2) economically disadvantaged (3) has English as a second language or is (4) historically underrepresented.

Sincerely,

*Lorenda C. Humphrey*  
*Katherine Seaman*  
*Frances Eagan*  
*Sarah Rados*  
*Sally Hazard*  
*Victoria Rankin*  
*Linda D. Sweeney*

H



## Comments/Suggestions

### 126-16-4. ELIGIBILITY:

We are strongly opposed to changing eligibility based on full scale IQ score to qualify a student for gifted services. Looking at only the full scale score will do the following:

1. eliminate the opportunity for students to have all their educational needs met i.e. LD/gifted or BD/gifted.
2. exacerbate the problem of cultural bias that research shows is evident in IQ testing.
3. create an elitist gifted population through the elimination of use of a subtest score to identify the economically disadvantaged.

### 126-16-6 ADMINISTRATION OF SERVICES

We commend the following proposed changes counting percent of time spent on itinerant travel and diagnostic/screening services. While we applaud the above changes, we strongly recommend that teachers' caseloads not be counted by number of students but rather by percent of student's day of special education services (or some formula to reflect true staffing needs). For example, one gifted student may need math acceleration, Language Arts acceleration, and enrichment services. This one student may need the services of three teachers or more important the time of one teacher. Such needs greatly impact the allocated time of gifted teachers.

Thank you for considering the above recommendations.

Judy Hansen  
HC 71, Box 464  
Princeton, WV 24740

Linda Saxton  
408 Monterey Hill  
Bluefield, WV 24701

11

## Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed 2419. You may attach additional sheets if necessary.

Ginger Huffman, Coordinator Office of Special Education  
Office of Special Education  
1900 Kanawha Blvd.,  
Charleston, WV 25305

### Comments/Suggestions

#### **126-16-1. General**

- ✓ 1.1 Add a sentence regarding the fact that the local education agency can accept two year old children with special needs early in the year if children are transitioning from Part C. It may state these apply to three year olds, as of their third birthday, or two year olds as part of transition process for preschoolers from part c programs.
- ✓ 1.1.2 b. What does receiving programs and services inappropriate to meet their needs mean? A definition may be helpful here.

#### **126-16-2 Identification/ Referral**

- ✓ 2.1.3 a- If educational performance is indicated should the SAT-9 scores be used as the level of measure for educational performance.

#### **126-16-3 Evaluation and Reevaluation**

- ✓ 3.1.3 b. How will sufficiently comprehensive be monitored. Do we need to define this or will county policy and procedures cover this aspect?
- ✓ 126-16-4 j (b)- delete the statement or meets eligibility for one or more of the disabilities as defined in this section, except LD. If they meet one of the other disabilities then the child should be served within that category. The regulations do not indicate this statement is required anymore.

#### **C. Special Considerations**

- (b) This sentence must be added. The local education agency will participate in transition planning conferences arranged by the designated lead agency under section 637 (a)(8).
- ✓ (c). The sentence should read for a child who turns (3) years old in the spring/summer the LEA is responsible for the implementation of the IEP services for children as of the third birthday, regardless of which agency provides the services. In some cases, services may be split between the Part C program and the

LEA, while in other cases the IEP services may be provided by Part C.

- ✓ The LEA is responsible for special education and related services for children with disabilities as of the third birthday and the Part C WV Birth to Three program cannot be legally obligated for services after the third birthday. However, the Part C program may agree to implement the IEP services. It may be prudent for the IEP committee to determine the level of services necessary to maintain skills over the summer months just as they would for extended school year services. The child's IEP team shall determine the date when services under the IEP or IFSP will begin.

### 5.1.5 Individualized Education Program Team Responsibilities

- ✓ Page 31 B. The removal from the regular educational environment or for preschoolers, as appropriate, to participate in appropriate activities occurs only...

### 6.1.5 Caseloads

Page 42 - Preschool

B. Remove the reference to the minimum of twelve hours per week. Counties are interpreting this to mean all kids need 12 hours of services regardless of the IEP process there are only a few kids getting more or less hours. It should read to be considered a center-based program the services must be available 12 hours per week.

2. Regular Education- part time-regular instruction in community based and/ or regular education program occurs 40% or more. Do we want to make it consistent with the other percentages in 2419. This would be 21% to no more than 60% of the time.

(C). Again clarify the intent of the twelve hours per week separate class instruction with time allocations for family consultation. The intent of the 12 hours is the program must be operating 12 hours per week not every child needs 12 hours of services per week.

(C) (2) Policy 2419 does not address what happens when you have nine children in a preschool classroom. It goes from 8 children per session with one aide to 10 children per session with two aides. My suggestion is to change 8 to 9 per session with an aide for a max of 18.

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

**Individual/Organization:** KANAWHA COUNTY SCHOOLS

**Title:** SPECIAL EDUCATION SPECIALISTS and SCHOOL PSYCHOLOGISTS

**Street Address:** 200 Elizabeth St. **City/State/Zip:** Charleston, WV 25311

**Comments / Suggestions**

**§126-16-1. General**

p. 62 ~~61~~ Under Parental Consent (8.1.4) b. It is unclear what the following means: "... transitions from Part C to Part B." Please identify PART C and PART B clearly. Glossary entries should be identified in the text (e.g., by italics, bold),  
(~~reference~~)

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

# Fax

To: D. Bodkins

Company: WUDE-05E

Fax: 304-558-3741

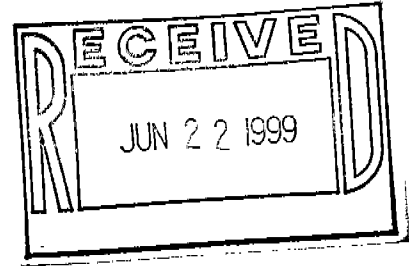
Phone:

Pages: 9 ~~8~~, including this cover sheet.

Date: 6-22-99

Time: 10:15 a.m.

Message: Comments on 2419 + Caseload implications



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From the desk of...

Wirt County Schools  
P.O. Box 189  
Elizabeth, WV 26143  
(304) 275-4279  
Fax: (304) 275-4581

K

## Policy 2419: Regulation for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

**Individual/Organization:** Pamela Kay Kohner & Wirt County Special Educators

**Title:** Special Education Coordinator, Wirt County Schools

**Street Address:** Mulberry St., PO Box 189 **City/State/Zip:** Elizabeth, WV 26143

### Comments / Suggestions:

#### §126-16-1. General

1.1

Scope. The exit age of "21 years of age prior to September 1 of such school year" needs to be made known...For example, a student turning 21 on June 14, 1999 would remain eligible for services during the 1999-2000 school year. This was the only place exit was addressed. A section on exit criteria & procedures needs to be added.

1.1.2.b.

Define "receiving programs and services inappropriate to meet their needs".

#### §126-16-2. Identification / Referral

2.1.

The policy statement should include Head Start in the child find activities to ensure participation since Head Start is a separate public agency.

2.1.3

"Team" not defined.

2.1.3.a.

"School Team" should be identified in relation to the School Assistance Program (SAP) so that two separate systems are not established. This should be a coordinated, consistent process from the initial referral.

2.1.3.a.

If educational performance is used as a standard, SAT/9 should be specified as the baseline on which to compare performance or education performance clearly defined.

#### §126-16-3. Evaluation and Reevaluation

3.1.2.b.C.

"An individual qualified to teach a child of her or his age" should be designated as the preschool special needs teacher as the early intervention representative or "as appropriate" could be added to the statement. In small counties a regular education teacher with these qualifications is difficult to designate. The Kdgn teachers, day care workers, or head start personnel do not have time available to participate in the evaluation of a student they do not know or may not have any further contact. For students who are already in early education programs such as day care or head start, it would be appropriate to include these personnel in the evaluation process.

3.1.12.b.D.

"A licensed physician" as an evaluator needs to be written in such a way that the MDET can use available reports. If the MDET makes the referral, they could be financially responsible. This should be avoided, since many referrals to a physician (ENT, eye doctor) can be generated from the screening process and could become an undue burden on the school systems.

3.1.3.b.

"Sufficiently comprehensive" needs to be defined

3.1.3.c.

The initial evaluation & reevaluation processes, although similar, are different enough that they should be treated separately. This information is confusing, indicates that a review may be conducted without a meeting, and requires test & evaluations be conducted, nowhere does it indicate the need for parent consent. The reevaluation process and form should specify the minimal information that is mandatory.

#### §126-16-4. Eligibility

4.1.2.a.

"Parent Input" needs to be defined

4.1.2.b.C.

The "lack of instruction in reading or math & "limited English proficiency" should be considerations on the team report for the initial eligibility.

4.1.2.b.C.(h).

In the case of a disagreement about eligibility, designate whether each team member must submit a separate written statement or just the one who disagrees.

4.1.2.E.

Indicate how to document when a student qualifies for more than one exceptionality area, ie. MI & SLI or PS & SLI).

- 4.1.3.b. Designate who makes the determination of a "a long period of time" and "to a marked degree"—these criteria are not measurable. If a student diagnosed according to the definition given does improve with interventions, part C. indicates that after documentation, the student no longer would qualify. This is confusing.
- 4.1.3.b.A.(f). Define "a schizophrenic condition" or designate who makes this determination.
- 4.1.3.e.A.(a) "deficit in hearing" needs to be better defined.
- 4.1.3.e.B.(a) A "hearing loss" should be defined in terms of dBs.
- 4.1.3.g.A. Define how Traumatic Brain Injury in students under 18 years of age is distinguished from the MI population.
- 4.1.3.g.B.(c). Define "onset".
- 4.1.3.h.B.(a). Define "educational needs". Indicate whether this includes only the 4 core curriculum areas or all areas of education, such as Physical Education.
- 4.1.3.i.A. This statement opens the door for all ADD/ADHD students to be placed in special education. It does not include students with AIDs, which may be a significant health impairment that affects educational performance.
- 4.1.3.i.B.(b) Define "educational needs".
- 4.1.3.j.B.(a). So many preschoolers qualify for services because they fall below the 75% of the normal rate of development in social/emotional/affective development & self-help skills due to lack of opportunity—no playmates or preschool programs in rural areas, lack of parenting skills which result in parents completing self-help skills for children because it is easier. These are not true disabilities and should be accounted for in the eligibility criteria.
- 4.1.3.k.C.(a). This statement indicates that the EC, through the SLD Team Report, is the most significant factor in determining a learning disability. This seems to preclude the discrepancy formula that is determined through the psychological evaluation. Clarification of which information should be considered the most influential factor needs to be given.

#### §126-16-5. Individualized Education Program Process

- 5.1.3.a.D. The way this reads, it is left open to interpretation when to include the explanation of NOT participating with non-exceptional peers. In this format, students who have an LRE of 1 or receive consultant services only would not be required to have this statement included on their IEP. Compliance procedures require it for all students with an IEP.
- 5.1.5.d.C. The "reasons for any removal" more accurately describes the statement required on the IEP form rather than the explanation of non-participation as described above.
- 5.1.5.g.A-D The preschool placement options need to be revised on the IEP forms and on the WVEIS system to indicate these choices

#### §126-16-6. Administration of Services

- 6.1.5.b.M. For TBI students, specify "training necessary to implement the students' IEP".
- 6.1.5.b. The numbering system does not make sense when the new caseload process begins.
- 6.1.5.b.A. A system for overseeing the caseload of special educators, etc. should be developed by the WVDE-OSE in cooperation with WVEIS so that procedures are consistent throughout the state.
- 6.1.5.b.B. "Other duties assigned to the special educator" will have to be defined for consistency. For example, planning periods, breakfast/lunch duty, bus duty, recess duty as well as writing IEPs, evaluations, screening, parent training, collaboration, membership on the SAP team, travel.
- 6.1.5.b.C. Specific comments are county-level data are attached for this section. Specific concerns: **5 Point Scale:** requires 5.5 additional professional personnel in Wirt County (2.5 LD, 1.5 MI, .5 preschool & 1 SLP). Wirt County has run within the state budget and within the state funding formula for personnel for 26 consecutive years. For the first time in 1999, the county has had to RIF professional staff and place many on transfers. If the special education policy required us to hire 5.5 additional professionals, money would have to be provided through the state funding formula. Our declining population would

not justify this increase according to the current formula even though it does more accurately reflect the awesome responsibility.

**3 Point Scale:** requires 3 additional positions (1.5 LD, 1.0 SLP, & .5 MI). Hiring even 3 additional professional personnel would be unacceptable unless funding is made available.

6.1.5.b.D.

Putting this responsibility on the building level administrator is a mistake. They are too busy to do justice to compiling caseload ratings. They do need to be aware of the system so they can appropriately assign duties to special educators and be more considerate of their time spent in student related services as opposed to lunch duty. If hiring or transferring of personnel is a possibility, then caseload information will have to be predicted for the next school year early enough to allow time for employee notifications and due process hearings.

6.1.5.b.E.

"Non-instructional special education services" have to be specified.

6.1.5.b.F.

Define "based upon students' needs" by specifying needs that would require an aide. This is written so loosely, that districts would be able to decrease the number of service personnel needed, especially in light of the numbers that are needed for transportation and maintenance and food services. Instructional aides will disappear from the ranks.

#### §126-16-7. Discipline

7.1.1.

*Designate how many "10 school days at a time" are allowed per year.*

7.1.1.d.A.

*Designate that the assessment plan for a discipline referral should include a Behavior Disorder specialist and that all FBAs and behavior intervention plans should be completed by a B.D. specialist.*

7.1.5.a.A. & B.

*Designate how the hearing officer is assigned, the costs involved & who is responsible for the costs*

#### §126-16-8. Procedural Safeguards

#### §126-16-9. Accountability

#### §126-16-10. Glossary

10.22. **Critical Skills:** This definition conflicts with the IEP training. In training, a critical skill was supposed to be addressed on each IEP. Students who are receiving Sp Ed services on a consultation basis or those with LRE 1 do not usually have significant deficits in the domains mentioned that could be considered a critical skill.

10.109. **Specially Designed Instruction:** The given definition is vague and leaves specially designed instructions open to interpretation. It is difficult to distinguish between what modifications or adaptations are usually used for classroom success with any student and modifications or adaptations that might meet the unique needs of an eligible student.

**Comments:** Please cross reference the glossary with page numbers in the text. This would make it easier to find specific citations. An index of topical areas would make it easier to locate and cross reference applicable procedures throughout the document.

Complete response form by listing each section of the Policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins

Director

Building 6, Room 304

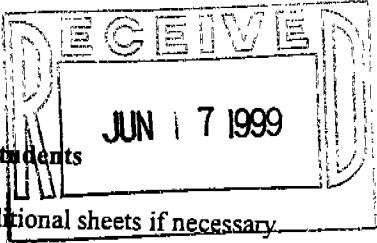
1900 Kanawha Boulevard East

Charleston, WV 25305-0330

e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)

FAX: (304) 558-3741

K



Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Deborah Kuhns

Title: LD/BD/Autism teacher (Big Elm Elem. - Harrison County)

Street Address: 106 Glenwood St. City/State/Zip: Fairmont, WV 26554

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

✓ Add boldface phrase:

Page 6 3.1.3. Evaluation Components

b. When evaluating a student with an exceptionality, the evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected or identified exceptionality, **and whether or not health factors have been diagnosed.**

§126-16-4. Eligibility (continued on attached sheets)

✓ Eliminate the boldface sentence:

Page 10 4.1.3. a. Autism

A. **The term does not apply if a student's educational performance is affected primarily because the student has a behavior disorder, as defined in these regulations.** (The reason this sentence should be eliminated is because a student with autism would still be identified as autistic whether or not he /she had a behavior disorder).

§126-16-5. Individualized Education Program Process

§126-16-6. Administration of Services (continued on attached sheet)

Page 41 6.1.5. I. Other Health Impaired

If the following statement remains after July 1, 2000, . **Students identified as other health impaired shall be assigned to and served by personnel who have the training necessary to implement the student's IEP.**

Then a clarification needs to be made about what training is necessary, because this statement is too vague.

§126-16-7. Discipline

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

Page 93 10.34.

Shouldn't there be a comma in the fifth line? **exceptional gifted (grades 9-12), mentally impaired**

Replace part of definition with boldface phrase:

Page 97 10.60

**Middle Childhood Education - the educational program that addresses the intellectual, physical, and social/emotional needs of learners aged 11 through 14 and/or in grades 5-8 across all programs in areas of study.**

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

§ 126-16-4. Eligibility (continued on attached sheet)

(Add) boldface phrase:

Page 12 4.1.3. b. Behavior Disorders

**(f) a schizophrenic condition - as defined by a group of psychotic disorders with disturbances in thought, emotion, and behavior-disordered thinking. (or an acceptable definition of schizophrenic condition)**

(Add) boldface phrase:

Page 19 4.1.3. i. Other Health Impaired

B. Documentation of both of the following:

**(b) the existence of educational needs as a result of the medical or health condition as determined by a multidisciplinary evaluation. (Or be specific about how educational needs are determined)**

(Add) boldface phrase:

Page 19 4.1.3. i. Other Health Impaired

**C. The term does not apply if a student's educational performance is affected primarily because the student has a behavior disorder.**

§ 126-16-6. Administration of Services

Page 45 6.1.5.

**F. If the following statement is adopted after July 1, 2000, Service personnel shall be assigned based upon students' needs (either individually or collectively).**

Then where will assignment of service personnel by student need be agreed to and documented since it cannot be written on the IEP? And if it cannot be agreed to and documented then this statement is not specific enough to consistently meet students' needs.

## 126CSR16

(a) General intellectual functioning at or above one standard deviation below the mean, in consideration of 1.0 standard error of measurement; and

(b) A severe discrepancy <sup>of 20 pts. or more</sup> between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, or mathematics reasoning.

*eliminate* (A) ~~The discrepancy shall be determined by a comparison of age-based standard scores of ability and achievement. A regression formula shall be used to determine the severity of the discrepancy. A severe discrepancy is defined as a minimum of 1.75 standard deviations difference, taking regression and 1.0 standard error of measurement into account.~~

*eliminate* (B) ~~A method utilizing the standard error of the difference scores shall be used only if the technical data (i. e., test correlations) necessary to account for the effects of regression are not available.~~

(C) ~~(c)~~ A severe discrepancy between ability and achievement that is NOT primarily the result of:

1. a sensory or motor disability;
2. a mental impairment;
3. a behavior disorder;
4. environmental or cultural differences or economic disadvantage as determined by comparing the student to other students in a similar situation (e. g., the same geographical area, similar socio-economic status, etc.); or
5. insufficient or inappropriate instruction.

### C. Special Considerations:

~~(a) When a student is suspected of being learning disabled, the multidisciplinary evaluation team must also complete a team report that includes:~~

~~(b) whether a student has a specific learning disability;~~

~~(A) the basis for making the determination;~~

Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kanawha County Schools / Exceptional Students

Title: recorded by Joan Wilson (from Lisa Hicks<sup>SAP</sup>)

Street Address: 200 Elizabeth Street City/State/Zip: Charleston WV 25311

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

✓ §126-16-4. Eligibility

p. 23 ✓ 4.1.3.1.B.(c)(B) Fluency ... existence of dysfluency impairment  
should be ... Fluency impairment  
dysfluency = impairment

✓ 4.1.3.1.B.(a)(B) LQ. of 77 or less limits use to Tests with mean of 100  
Needs to include flexibility for tests with mean of 50 or other.

✓ §126-16-5. Individualized Education Program Process

p. 25 ✓ 5.1.2.a.A. Number of people required for IEP Team is  
not clear - 7, 6, 5, 4, 3

p. 27 ✓ 5.1.3.a.C. Additions of "... supplementary aids/services ...  
on behalf of the student ... supports for school personnel ..."  
Very Appropriate Additions.

Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kanawha County Schools / Exceptional Students

Title: recorded by Joan Wilson

Street Address: 200 Elizabeth Street City/State/Zip: Charleston WV 25311

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

✓ §126-16-3. Evaluation and Reevaluation

p.5 3.1.7.c. clarify... within 80 days... school days, calendar days, business days

§126-16-4. Eligibility

p.13 4.1.3.c.B.(d) Appropriate reflection of the current research  
p.12 4.1.3.b "BEHAVIOR DISORDERS" is OLD TERMINOLOGY. The Federal Regs. says "EMOTIONALLY DISTURBED". Not Socially Maladjusted. (As reported by Charles Szasz at Public Hearing 6-8-99)

§126-16-5. Individualized Education Program Process

p.27 5.1.3.a.B.(a) SPELL CHECK  
"meeting... educational needs..."  
should be "... educational needs..."

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kanawha County Schools/Exceptional Students

Title: recorded by Joan Wilson

Street Address: 200 Elizabeth Street City/State/Zip: Charleston WV 25311

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

- ✓ p.6 3.1.3.b Appreciate the opportunity to evaluate all the areas the team feels may effect the student's education
- ✓ p.7 3.1.3.c The language is unclear as to the procedure to review the needs for testing without a meeting.
- ✓ p.7 3.1.3.d Observation by evaluation team member may or not be needed. this should be a MDET decision.

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

- p.35 5.1.5.i Guidelines for eligibility for ESY. What criteria are to be used, if regression/recoupment i.B.(a) is not documented. "Suspected Regression"  
Clarify "...may exhibit..."
- 5.1.5.i/D New goals for next year on current IEP cannot be maintained when no instruction on some goals has been done.

Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kanawha County Schools/ Exceptional Students

Title: recorded by Joan Wilson

Street Address: 200 Elizabeth Street City/State/Zip: Charleston, WV 25311

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

p.8 3.1.3.g Individual achievement may be replaced by current (within 1 year) group achievement testing (ie: SAT-9) for 8th grade review if determined by the MDET

§126-16-4. Eligibility

p.9 4.1.2.b.B(a) Lack of instruction - Please clarify - absences, poor teaching, school on academic probation, teacher on plan of improvement, cultural factors

p.10 4.1.2.b.C.(h) This may be done by a check under "AGREE" ~~do~~ beside signature on form

§126-16-5. Individualized Education Program Process

p.44 ✓ b.B. "Caseloads ... supplemental aids/services... the other duties assigned to the special educator (e.g. screening, ... itinerant travel time). Yeah! Appreciation of acknowledgement of "other things" needed to educate these students.

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kanawha County Schools/ Exceptional Students

Title: recorded by Joan Wilson

Street Address: 500 Elizabeth Street City/State/Zip: Charleston, WV 25301

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

p. 45 ✓ b.E. Clarify "... the weighted caseloads shall be adjusted by multiplying the % of the week ... available..."

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Charles Szasz / Kanawha County Schools

Title: Lead School Psychologist

Street Address: P.O. Box 630

City/State/Zip: Elkview, WV 25071

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

Page 12, b. Behavior Disorders - Behavior Disorder should be changed to Emotionally Disturbed to avoid the confusion of a student with behavior problems but not eligible for BD services. Emotionally Disturbed is the same terminology in the Federal regulations. This change has been suggested by lawyers who specialized in special education law

**§126-16-4. Eligibility**

Page 15 f. Gifted, (A) The four core curricular areas needs to be defined.

Page 18 Mental Impairment B. (a) After standard deviation of 15, add: or 16. Some intelligence tests: -such as ~~Stanford-Binet~~ Stanford-Binet have a standard deviation of 16. The current wording implies that only intelligence tests with standard deviation of 15 can be used in evaluation.

Page 21 Specific Learning Disability, (B) A method utilizing the standard error of the difference scores is available.

This statement should be deleted because the new LDD program, which I designed, has a test template for tests without IQ-achievement correlations to compute a discrepancy based on a new formula devised by Stanton Reynolds in 1985. This procedure was approved by Dr Josie McInturf in Novemb.

of 1998 to replace the standard error of the ~~§126-16-6 Administration of Services~~ different method. This new method was shared in the LDD workshops conducted in the eight RESA regions.

126-16-5 con. p35 B, d Consider deleting the word likelihood since it is ambiguous and word: regression with slow recoument...  
~~§126-16-7 Discipline~~

2g 15 Gifted, C. (d) The term psychological adjustment disordered for eligibility as exceptional gifted is inappropriate and incorrect. In DSM IV, adjustment disorder refers to emotional or behavioral symptoms that ~~§126-16-8 Procedural Safeguards~~ do not persist for more than 6 months! Consequently, adjustment disorder is not equivalent to an emotional disturbance such as depression, schizophrenia, or anxiety. A student identified as gifted in the eighth grade who is experiencing stresses in the home that is ~~§126-16-9 Accountability~~ transient in nature under this definition would be identified as exceptionally gifted. A better term would be emotionally disturbed.

Page 19 Other Health Impaired, i. Delete attention deficit disorder and add to attention deficit hyperactivity the following with or without hyperactivity.  
§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Sarah Kendall, Kanawha County Schools

Title: School Psychologist

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

✓ Pg 7 (C) Conduct Review without meeting

✓ Good idea.  
Pg 8 (D) Omit word individual

§126-16-4. Eligibility

SLD pg 21 (b) I very much agree with "in one or more of the following areas". We needlessly have been required in the past to eval. areas of no concern + as a result exclude some kids who really have learning disabilities

§126-16-5. Individualized Education Program Process

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: KCS

Title: \_\_\_\_\_

Street Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

**Comments / Suggestions**

✓ §126-16-1. General - p. 2 - Keep the statement: "including students w/ disabilities who have been suspended or expelled from school in FAPE."  
p. 2 1.6 - Reconsider this!

**§126-16-2. Identification / Referral**

✓ §126-16-3. Evaluation and Reevaluation pg. 8 - Cross-out the word individual (Reevaluation of a gifted...)

✓ §126-16-4. Eligibility pg. 14 - Retain part B under Intellectual Ability add "historically under represented population, or if the student's primary language is standard English."  
Eligibility of the exceptional gifted student should be considered by the Eligibility committee not the IEP team.  
Pg. 15 - Keep the new addition: and one or more of the following.

**§126-16-5. Individualized Education Program Process**

✓ P. 41-42 Preschool Sp Needs: (see back)  
Some allocations should be consistent with new placement options. in: (p. 33) A. Early Childhood  
P. 16. Inconsistency in M-O - eliminating terms mild, moderate + severe but on case loads (p. 40) case loads are calculated by mild/moderate/severe.

**§126-16-6. Administration of Services**

*Special Considerations*  
*Give examples & clarify means & ways*

*of funding to accommodate part B children during 3  
months the summer*

*pg. 33 - Placement Options for Preschool students (3-5)*

**§126-16-7. Discipline**

**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

**§126-16-10. Glossary**

*Add the definition of: 4 core curriculum areas (pg. 15A)*  
*pg. 3 17. Define what is included under educational needs.*  
*Define surrogate, A surrogate parent can be . . .*

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

**Dr. Dee Bodkins**  
**Director**  
**Building 6, Room 304**  
**1900 Kanawha Boulevard East**  
**Charleston WV 25305-0330**  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: KCS

Title: \_\_\_\_\_

Street Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

**Comments / Suggestions**

✓ §126-16-1. General - p. 2 - Keep the statement: "including students w/ disabilities who have been suspended or expelled from school in FAPE."  
p. 2 1.6 - Reconsider this!

**§126-16-2. Identification / Referral**

✓ §126-16-3. Evaluation and Reevaluation pg. 5 - Cross-out the word individual (Reevaluation of a gifted...)

✓ §126-16-4. Eligibility pg. 14 - Retain part B under Intellectual Ability add "historically under represented population, or if the student's primary language is standard English."  
Eligibility of the exceptional gifted students should be considered by the Eligibility Committee not the IEP team.  
Pg. 15 ✓ Keep the new addition: and one or more of the following.

**§126-16-5. Individualized Education Program Process**

✓ P. 4-42 Preschool Sp Needs: (see back)  
Some allocations should be consistent with new placement options. ii: (p 33) <sup>13</sup> Early Childhood

P. 14. Inconsistency in MD - eliminating terms mild, moderate, & severe but on case loads (p. 40) case loads are calculated by mild/moderate/severe

p. 19 Take ADD out. Just have ADHD

Preschool

*Special Considerations*

**§126-16-6. Administration of Services**

*Give examples & clarify means & ways*

*of funding to accommodate part B children during 3*

*during the summer*

*pg 35 - Placement Options for Preschool students (3-5)*

**§126-16-7. Discipline**

**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

**§126-16-10. Glossary**

*Add the definition of: 4 core curriculum areas (pg. 15A)*

*pg. 3 1.7. Define what is included under educational needs.*

*Define surrogate, A surrogate parent can be . . . .*

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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Director  
Building 6, Room 304  
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Charleston WV 25305-0330  
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Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: KANAWHA COUNTY SCHOOLS

Title: Special Education Specialists and School Psychologists  
200 Elizabeth Street

Street Address: \_\_\_\_\_ City/State/Zip: Charleston, WV 25311

Comments / Suggestions

§126-16-1. General - Re-word 1.1 last sentence to read.

"unless the student has met graduation requirements as specified by the IEP for a modified diploma or state/local policy pertaining to graduation requirements for students receiving a standard diploma".

§126-16-2. Identification / Referral

3.1.3 Evaluation Components: "... shall be observed by at least one multidisciplinary evaluation team member, other than the student's regular classroom teacher, in the regular classroom and, when appropriate, in at least one other setting." Why add this?  
In many cases, this is overkill. Take this out and leave the decision of doing or not doing an observation up to the MAET.

§126-16-3. Evaluation and Reevaluation

3.1.2. Multidisciplinary Evaluation Team Composition: "For a student suspected of being sensory impaired... a licensed physician." Could an updated medical report suffice for the presence of a physician?  
Think of the costs!  
see above

§126-16-4. Eligibility

3.1.3 Definitions and Eligibility Criteria: Behavior Disorders (EBD) as recommended this category be renamed Emotional/Behavioral Disorders, as depression and many other psychiatric disorders are not truly behavioral in nature; For example, an anxious or depressed student may not manifest externalizing behaviors (which are largely what the previous BD criteria are) \* Over \*

§126-16-5. Individualized Education Program Process

5.1.2 B - reword required to read "at least one regular education teacher of the student including the referring ~~school~~ the receiving reg. ed. teacher."

5.1.5 G. - Does solely mean that these can be considerations factors, as long as they are not the sole factors?

Also, related to the Behavior Disorders category.

→ "B. The term does not apply to students who are Socially maladjusted, unless it is determined that they meet the above definition."

We recommend that there be defined, exclusionary criteria for the term "Socially Maladjusted". For example, consult the DSM-IV for Oppositional Defiant Disorder and/or Conduct Disorder criteria

p. 96 10.59 Meeting - proposed indicates what "does not" constitute a meeting, clarification/definition of meeting is not given

p. 98 10.68 + p. 99 10.78 - One very limited / be consistent

p. 101 10.94 parent. Counseling - IEP is devel. for child  
Not parent

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- IEP is devel. for child

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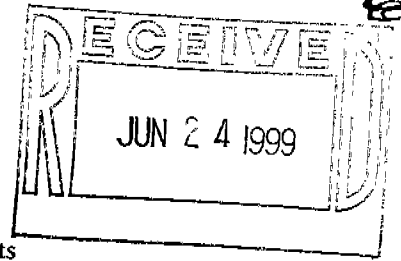
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RL



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kathy Reese / Lewisburg Elementary

Title: teacher

Street Address: 116 Mackle Lane City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

There is no objective process for service personnel. Aside from the fact that non-mandated positions are usually the first cut, service

(p. 37-45)

§126-16-6. Administration of Services

personnel decisions on an "as needed" basis

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§126-16-7. Discipline

of individualized instruction which is the spirit of the IEP process. The lack of a limit could easily make special ed. classes places where the teachers are reduced to only providing crowd control techniques rather than real instruction

§126-16-8. Procedural Safeguards

The weighted caseload concept makes a lot of sense.

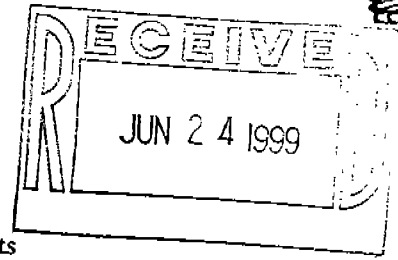
§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

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**Policy 2419: Regulations for the Education of Exceptional Students**

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Individual/Organization: Kathy Reese / Lewisburg Elementary

Title: teacher

Street Address: 116 Mackle Lane City/State/Zip: Lewisburg, WV 24901

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§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

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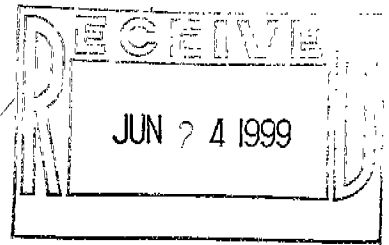
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**Policy 2419: Regulations for the Education of Exceptional Students**

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Individual/Organization: Connie Hilton - Lewisburg Elementary School

Title: Elementary Teacher

Street Address: 200 N. Lee Street City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

There is no objective process for service personnel, aside from the fact that nonmandated positions are usually cut, and service personnel decisions on an "as needed" basis are subjective and able to be interpreted on a financial rather than best practice basis. In addition, the complete lack of limiting classroom size (number of students per period) goes against the purpose of individualized instruction, which is the spirit of the IEP process. This lack of limit only reduces "special education" classrooms to places providing crowd control techniques, rather than academic instruction. The weighted caseload concept makes a lot of sense.

§126-16-6. Administration of Services (p. 37-45)

§126-16-7. Discipline

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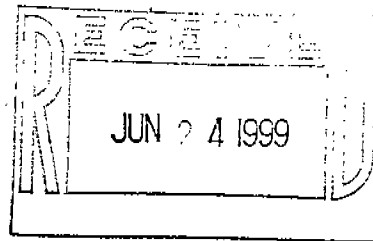
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Individual/Organization: Connie Hilton - Lewisburg Elementary School

Title: Elementary Teacher

Street Address: 200 N. Lee Street City/State/Zip: Lewisburg, WV 24901

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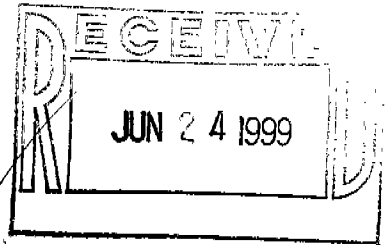
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**Policy 2419: Regulations for the Education of Exceptional Students**

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Individual/Organization: Connie McDowell - Lewisburg Elementary School

Title: teacher

Street Address: 206 N. Lee Street City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

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§126-16-2. Identification / Referral

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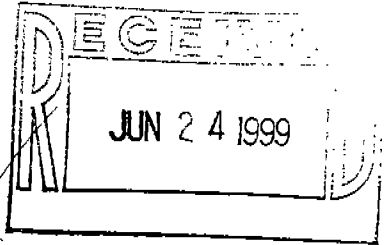
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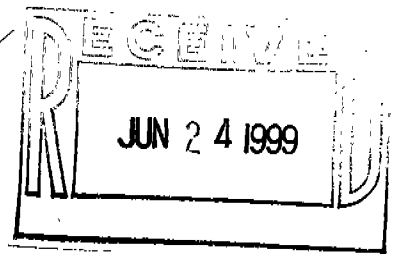
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**Policy 2419: Regulations for the Education of Exceptional Students**

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Individual/Organization: Mary C. Scarborough

Title: Classroom Teacher

Street Address: 201 Echols Ln. City/State/Zip: Lewisburg WV 24901

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

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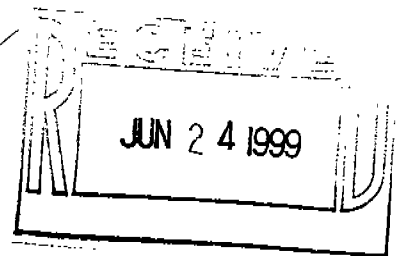
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Individual/Organization: Mary C. Scarborough

Title: Classroom Teacher

Street Address: 201 Echols Ln. City/State/Zip: Lewisburg WV 24901

**Comments / Suggestions**

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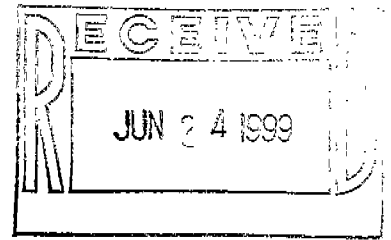
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**Policy 2419: Regulations for the Education of Exceptional Students**

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Individual/Organization: Brenda Shafer - Lewisburg Elem.

Title: teacher

Street Address: 206 Lee Street City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

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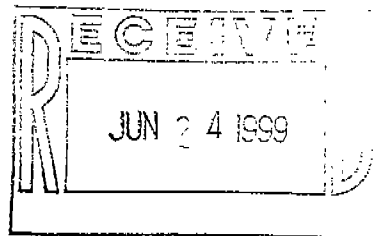
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Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Brenda Shafer - Lewisburg Elem.

Title: teacher

Street Address: 206 Lee Street City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Recvaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

§126-16-6. Administration of Services (p. 37-45) There is no objective process for service personnel. Aside from the fact that non-mandated positions are usually the first cut, service personnel

§126-16-7. Discipline decisions on an "as needed" basis are subjective and able to be interpreted on a financial rather than best practice basis.

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§126-16-9. Accountability may reduce sp. ed. classrooms to places where teachers are reduced to only providing crowd control techniques rather than

§126-16-10. Glossary academic instruction. The weighted caseload concept makes a lot of sense.

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

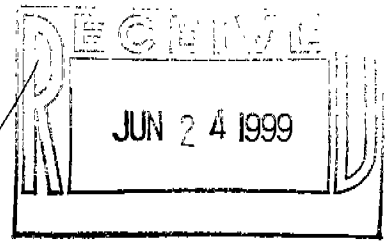
Dr. Dee Bodkins  
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Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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e-mail: [pearce@access.k12.wv.us](mailto:pearce@access.k12.wv.us)  
FAX: (304) 558-3741



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Lewisburg Elem. School

Title: 3rd grade teaching team

Street Address: 206 N. Lee St. City/State/Zip: Lewisburg Elem. School

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

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§126-16-7. Discipline

§126-16-8. Procedural Safeguards

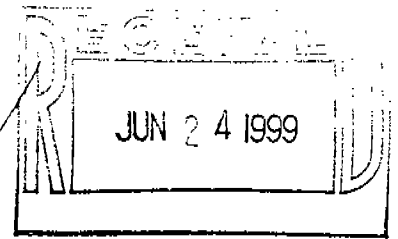
§126-16-9. Accountability

§126-16-10. Glossary

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**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Lewisburg Elem. School

Title: 3rd grade teaching team

Street Address: 206 N. Lee St. City/State/Zip: Lewisburg Elem. School

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

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§126-16-7. Discipline

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

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§126-16-8. Procedural Safeguards

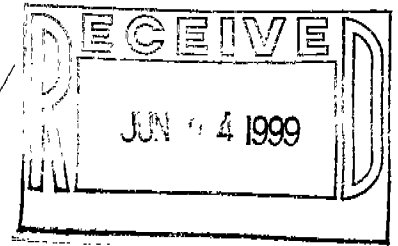
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**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Betsy Rawlins Myers - Greenbrier Co. Bd Educ.

Title: Teacher - Hard of Hearing

Street Address: \_\_\_\_\_ City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

§126-16-6. Administration of Services

(pg. 37 - 45) Regarding caseload limits + lack of limits; one-on-one & small group instruction is the key to effective service. Without limits + service personnel to deal with the large variety of students, special education classes will basically turn into "holding areas."

§126-16-7. Discipline

§126-16-8. Procedural Safeguards

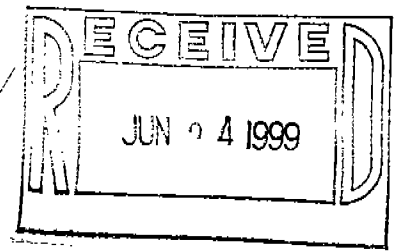
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§126-16-10. Glossary

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**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Betsy Rawlins Myers - Greenbrier Co. Bd Educ.

Title: Teacher - Hard of Hearing

Street Address: \_\_\_\_\_ City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

§126-16-1. General

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§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

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§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

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§126-16-8. Procedural Safeguards

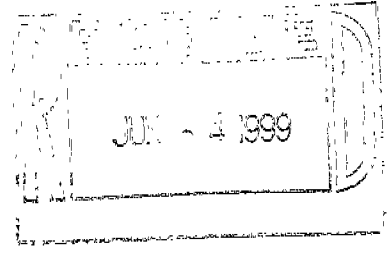
§126-16-9. Accountability

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**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Shelbie Green

Title: Teacher

Street Address: 206 N. Lee St. City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

§126-16-6. Administration of Services (p. 37-45)

There is no objective process for service personnel. Aside from the fact that non-mandated positions are usually the first cut, service personnel decisions are on an "as needed" basis. They are subjective and able to be interpreted on a financial rather than best practice basis. In addition, the complete lack of

§126-16-7. Discipline

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§126-16-8. Procedural Safeguards

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The weighted caseload concept make a lot of sense.

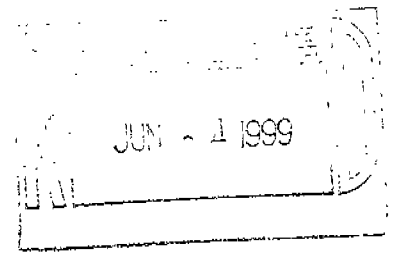
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**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Debbie Green

Title: Teacher

Street Address: 206 N. Lee St City/State/Zip: Lewisburg, WV 24901

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

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§126-16-8. Procedural Safeguards

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§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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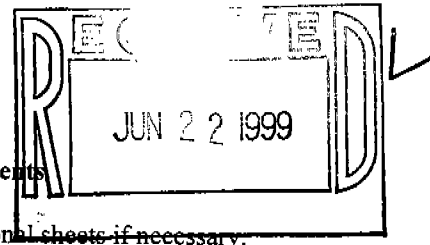
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Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Andrea LaRue (Morgan County Schools)

Title: Teacher - L.D. Resource

Street Address: 95 Michael Manor Rd. City/State/Zip: Berkeley Springs, WV 25411

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility for Specific Learning Disabilities

- ① Many in the field of Learning Disabilities are calling into question the validity of the ability-achievement discrepancy model. Are there any plans to address those concerns?
- ② Please explain exactly how to compute a severe discrepancy - minimum of 1.75 standard deviations difference, taking regression and 1.0 SEM into account.
- ③ Also, please explain exactly how to use the method utilizing the standard error of the difference scores.

§126-16-5. Individualized Education Program Process

- ① Is it necessary for every IEP team member to be present for the entire meeting? Our schools' schedules are completely disrupted and regular classroom, as well as special education class instruction is sacrificed to the IEP process each Spring during IEP Reviews.
- ② What is the absolute minimum membership required at every IEP meeting?

§126-16-6. Administration of Services

*Caseload determination effective 7/1/00: If I understand the method of computation correctly, it is much more realistic and will contribute to better serving the students. If a student has a #4 rating, does that mean s/he is weighted as 4 out of a possible 40? - or ten #4 students would be the maximum caseload of 40?*

§126-16-7. Discipline

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

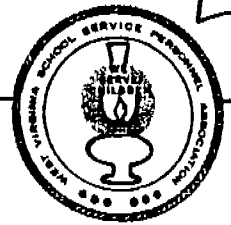
§126-16-10. Glossary

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# West Virginia School Service Personnel Association



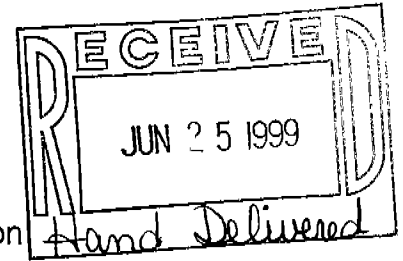
President: Susan E. McCracken  
Executive Secretary: Kenneth C. Legg     June 25, 1999

1610 Washington Street, East  
Charleston, WV 25311  
Telephone: (304) 346-3544  
FAX: (304) 346-3548

To:            Dr. Dee Bodkins, Director  
                 Office of Special Education

From:         Kenneth C. Legg, Executive Secretary  
                 West Virginia School Service Personnel Association

Re:            Proposed Revisions to Policy 2419:  
                 Regulations for the Education of Exceptional Students



It has recently (June 14, 1999) come to our attention that the Office of Special Education (OSE) is proposing major revisions to Policy 2419, Regulations for the Education of Exceptional Students. We received this information after the public hearings in this area; consequently, we were unable to participate. After reviewing the proposed revisions, we feel it important to relate some of our concerns.

It is our understanding that many of the revisions will bring West Virginia into compliance with the new federal regulations. Our concern is not with these revisions, but with the proposed changes in caseloads which begin on Page 44, Section 126-16-6, Administration of Service. There is some difficulty in fully understanding the way the policy is organized. Perhaps if we had been able to participate in a public hearing the OSE could have clarified the meaning of some of the proposed revisions.

We believe the above section will have a major impact on students, teachers and classroom aides. As we read the changes, it seems that classroom aides will be virtually eliminated in most instances. It is our belief that many special education students are able to function better only because of the assistance of aides in a school setting. A look at past experiences show that the special education aide performs a valuable function in the special education classroom. Moving cautiously seems to be the thing to do.

Perhaps a delay before adoption or implementation of these revisions is needed so that all persons concerned, including teachers, aides, parents and others charged with special education responsibilities, can have a more suitable opportunity for suggestions and clarification. In this way, proposed changes will be better received and defended.

Attached is a listing of additional comments by the West Virginia School Service Personnel Association.

**ADDITIONAL COMMENTS ON PROPOSED REVISION OF POLICY NO. 2419  
BY WVSSPA**

- ✓ §126-16-5., p.24 – We suggest a requirement that the student’s annual IEP review be completed no later than June 1<sup>st</sup> of each school year. This would facilitate staffing arrangements for the coming school year.
- ✓ §126-16-5.1.2., p. 25 – We suggest the amendment of section “F” to require the inclusion of the teacher’s aide assigned to the student or the classroom where the student receives a significant portion of his or her instruction on the IEP team.
- ✓ §126-16-5.1.4.(c), p.28 – We suggest that a specific reference be made to include the capacity or tendency of the student to physically or verbally abuse staff and/or other students as a factor in planning strategies to properly educate the student.
- ✓ §126-16-6.1.5.(b)(B), p.44 - It does not appear that “supplementary aids/services” is adequately defined.
- §126-16-6.1.5.(b), pp. 44-45 – We object to the tremendous amount of discretion given to county boards of education in the placement of teacher’s aides/ paraprofessionals in special education classrooms. At the present time, we believe that boards of education only utilize teacher’s aides/paraprofessionals when required to do so by regulation. It is clear that financially pressured boards of education will be very sparing in the utilization of teacher’s aides/paraprofessionals if given complete discretion in staffing. The only check on this tendency would appear to be the pressure parents might bring at the IEP meeting. In our opinion, staffing of teacher’s aides/paraprofessionals should be based on objective criteria rather than the perceived financial needs of a county board of education. Although the current ratios of student to teacher and teacher’s aide may not be a perfect fit for all circumstances, these ratios provide an objective standard which prevents boards of education from sacrificing the physical and educational needs of special education students to short-term financial considerations.
- ✓ §126-16-7.1.7.(a) – We believe that section 126-16-7.1.7.(a) should be amended to make it clear an employee of a public agency can also report a criminal act committed by a student with a disability.

Jean & Marten Day  
 830 Belmont Rd.  
 Charleston, W.Va. 25314

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Karen Layne

Title: Lead teacher of gifted - Kanawha Co. Schools

Street Address: 1109 Galway Cir City/State/Zip: Chas., W.V. 25314

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

§126-16-3. Evaluation and Reevaluation. p. 8 B f delete "individual"

§126-16-4. Eligibility gifted p. 14 f (B) maintain entire paragraph, after "disadvantaged," add "an historically underrepresented population," and add "standard" to the phrase "other than standard English..."  
 {this might help the OCR cause}

**§126-16-5. Individualized Education Program Process**

§126-16-6. Administration of Services p.50 A The new requirement for providing transportation from private schools to a service location may result in decrease of services available ~~to~~ because of increase in transportation costs.

p.49 The requirements for the component parts of a service plan are still unclear. We need clarification concerning the service plans that contain dual eligibility [ex. g. Retd/LD] or eligibility with related service [gifted/speech] as to whether the parent may choose one service, but not the other, or must parents accept all services just as with the IEP process. p.52 7.1.1 be cross out "at a time"

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

p.19 (2) (Keep definition for Economically Disadvantaged) 10 (25)

Add a new definition for "four core curricular areas"

Four core curricular might include math, reading, social studies, science, and written language, which would be Five core curricular subjects

Complete response form by listing each section of the policy.

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AUTOMATIC COVER SHEET

DATE : JUN-14-99 09:55 AM

TO :

FAX #: 95583741

FROM : KENNA ELEMENTARY

FAX #: 3043486107

3 PAGES WERE SENT

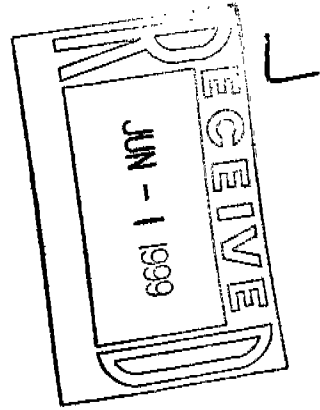
(INCLUDING THIS COVER SHEET)

**Policy 2419: Regulations for the Education of Exceptional Students**

**Individual/Organization:** Karen Linton, Davis Center School

**Title:** Special Education Teacher

**Street Address:** Blackwater Falls Rd.      **City/State/Zip:** Davis, WV 26260



**Comments/Suggestions**

**126-16-1. General**

**126-16-2. Identification/Referral**

**126-16-3. Evaluation and Reevaluation**

**126-16-4. Eligibility**

Under 4.1.2.b.B.a, I have a problem with a “lack of instruction in reading or math” not being a determining factor for eligibility. Many of our students have been out of school for at least a year. Due to this lapse in their education, they demonstrate deficits in their academic skills. This provides a discrepancy between their achievement and performance scores and should qualify them for services if they are needed.

**126-16-5. Individualized Education Program Process**

**126-16-6. Administration of Services**

**126-16-7. Discipline**

**126-16-8. Procedural Safeguards**

Under 8.1.5.C, it states that a surrogate parent should be appointed when the student is a ward of the state. Our students are wards of the state, but the parental rights have not been terminated in most cases. If the parental rights have not been terminated, the parents should be able to provide consent for their child even though they are wards of the state.

**126-16-9. Accountability**

**126-16-10. Glossary**

# Connie J. Matthews

P. O. Box 487  
Morgantown, WV 26507  
(304) 598-3406  
Fax: (304) 598-3512  
connie@westco.net  
<http://www.reedmartin.com>

## FAX TRANSMISSION COVER SHEET

Date: June 25, 1999

To: *Wes Bodkins*

Fax: 558-3741

Re: *Public Comments on Policy 2419*

Sender: Connie J. Matthews

YOU SHOULD RECEIVE 5 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 598-3406.

M

# CONNIE JOANNE MATTHEWS

P. O. Box 487 • MORGANTOWN, WV 26507 • (304) 598-3406 • FAX: (304) 598-3512

June 25, 1999

Ms. Dee Bodkins  
Director of Special Education  
WV Department of Education  
1900 Kanawha Blvd., E. Building 6  
Charleston, WV 25305

**VIA FAX: 558-3741**

Dear Dr. Bodkins:

Consider this my public comments on Policy 2419.

✓ **1.5  
Right to a Free Appropriate Public Education**

**The statement in Policy 2419 violates 34 CFR 300.121**

Individuals with disabilities are between three through age 21. WVDE has this stated as the right ends at age 21. **The legal right ends with the 22nd birthday.**

✓ **2.1  
Identification/Referral - Policy Statement**

**The statement in Policy 2419 violates 34 CFR 300.121**

Each public agency shall conduct child find activities to ensure that all students with disabilities, ages 0-21, .....

**The legal right ends with the 22 birthday.**

✓ **3.1.2  
Multidisciplinary Evaluation Team**

**Violates 20 USC 1415(b).**

Policy 2419 does not have the parent as part of the MDET.

**Discipline**

**7.1.1.**

Violates federal law by suggesting that serial removals of ten days are not changes in placement and by stating that school personnel only (with no parent involvement) will make that determination.

**7.1.1.**

**Violates 20 USC 1415.**

Authority of school personnel for removals of not more than 10 school days at a time.

WVDE gives authority for schools to remove students for more than 20 days in a school year.

**7.1.2.**

Violates federal law by stating that the parent will simply be given notice of the school's "Decision to Remove" instead of the federally requested prior written notice.

Further, it clearly distinguishes between the IEP and the parent - the parent, however, is a member of the IEP team.

**7.1.5.**

Requires an expedited hearing to be completed by 45 days.

**What is "expedited" about that since all hearings are required to be completed within 45 days.**

**(See 8.1.11)**

**7.1.5.**

Provides parties to hearing can wait until two days prior to the hearing to disclose evidence when **the federal law requires disclosure five days prior.**

**8.1.3. Notice in Understandable Language**

**Violates federal law which clearly requires that prior written notice and notice of procedural safeguards both must be "written in an easily understandable**

manner."

But Policy 2419 changes that to a different phrase - "Language understandable to the general public."

Further, notice must be given to students approaching the age of majority and 8.1.3 does not deal appropriately with those disabled students' level of knowledge and reading comprehension:

**9.1.3.**

**Private Insurance**

**Policy 2419 Violates the IDEA and Fourth Circuit Court of Appeals precedents!**

**Clearly violates current federal law and U. S. Court of Appeals Law for the Fourth Circuit (which rules West Virginia) by requiring parents to provide access to private insurance to pay for a "free" appropriate education.**

**10.4.3.**

**Functional Behavioral Assessment**

This is so vague it violates the State Department of Education's duty to assure that all evaluation meets state standards.

**Where is the standard?**

**10.5.9.**

**Meeting**

This finally admits what every parent knows - school personnel meet prior to an IEP meeting to develop a proposal.

**Therefore, prior written notice must be given to the parent before the IEP meeting—"a reasonable time prior to proposing...."**

**10.7.6**

**Personally Identifiable**

**This is properly described, however, it is the consistent position of the WVDE to deny this information to parents and students.**

**\*\*\*\*\*Opportunity to Examine Record has been completely taken out.  
Policy 2419 violates 34 CFR 300.127 by omitting this legal information.**

**A parent of a student receiving special education services, who relies on Policy 2419, will not know about their rights to review records.**

**The only reference I can find is in parental participation that states parents have the right to inspect and review all educational records.**

**Policy 2419 violates 20 USC 1414 and 20 USC 1415**

**WVDE leaves out the vital legal requirement for all evaluation data to be given to parents before an MDET, EC or IEP meeting. It also leaves out the legal requirement for schools to give parents on request access to their child's educational file prior to an IEP or a hearing.**

**Policy 2419 violates 34 CFR 300.127**

**WVDE has also taken out the legal requirement for schools to give parents or students notice that they are no longer in need of the student's educational records and are going to destroy them.**

  
Connie Matthews

M

**Policy 2419: Regulations for the Education of Exceptional Children**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

**Individual/Organization:** Elaine S. Max, Jackson County Schools

**Title:** (Licensed) School Psychologist

**Street Address:** 1551 Autumn Road **City/State/Zip:** Charleston WV 25314

**Comments/Suggestions****§126-16-1. General****§126-16-2. Identification/Referral****§126-16-3. Evaluation and Reevaluation****§126-16-4. Eligibility**

✓ Behavior Disorders needs to be changed to **Emotional Disturbance** to match the language of the Federal Regulations. The definitions in 2419 and the Federal Regulations are identical.

**§126-16-5. Individualized Education Program Process****5.1.3. IEP Content**

(c)F. What happened to "accommodations"? If it is mentioned somewhere else, it should be cited.

5.1.5.b.E.(b) & (c): Home/hospital services require a physician's request and explanation. Placing a student in OSE is an IEPT decision, but home/hospital is not. The student may need an IEP for the home/hospital placement, but should it be included under Special Education: Out-of-School Environment?

Using the logic for home/hospital, would it not follow that students who are incarcerated are also in OSE?

**§126-16-6. Administration of Services**

**6.1.5. Caseloads**

Caseload estimates based on the 5 point scale: it appears that the more intense the service provided by the special education teacher, the less "credit" is given when compared with a teacher who does a lot of consultation. This tends to disfavor teachers with self-contained classrooms (esp., SPMI). It does help to clarify SLD work loads which include a great deal of inclusion and the attendant consultations.

**§126-16-7. Discipline**

**§126-16-8. Procedural Safeguards**

8.1.8 - Where is "a"?

**§126-16-9. Accountability**

**§126.16-10. Glossary**

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**ERRATA:**

Typos on: page 27: D. cites (D) above - should it be C?  
page 29: A. ... programs of study  
page 67: f. ... implement the mediation .... (t left out)

---

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

**Dr. Dee Bodkins**  
**Director**  
**Building 6, Room 304**  
**1900 Kanawha Boulevard East**  
**Charleston WV 25305-0330**  
**e-mail: pcarte@access.k12.wv.us**  
**FAX: (304) 558-3741**

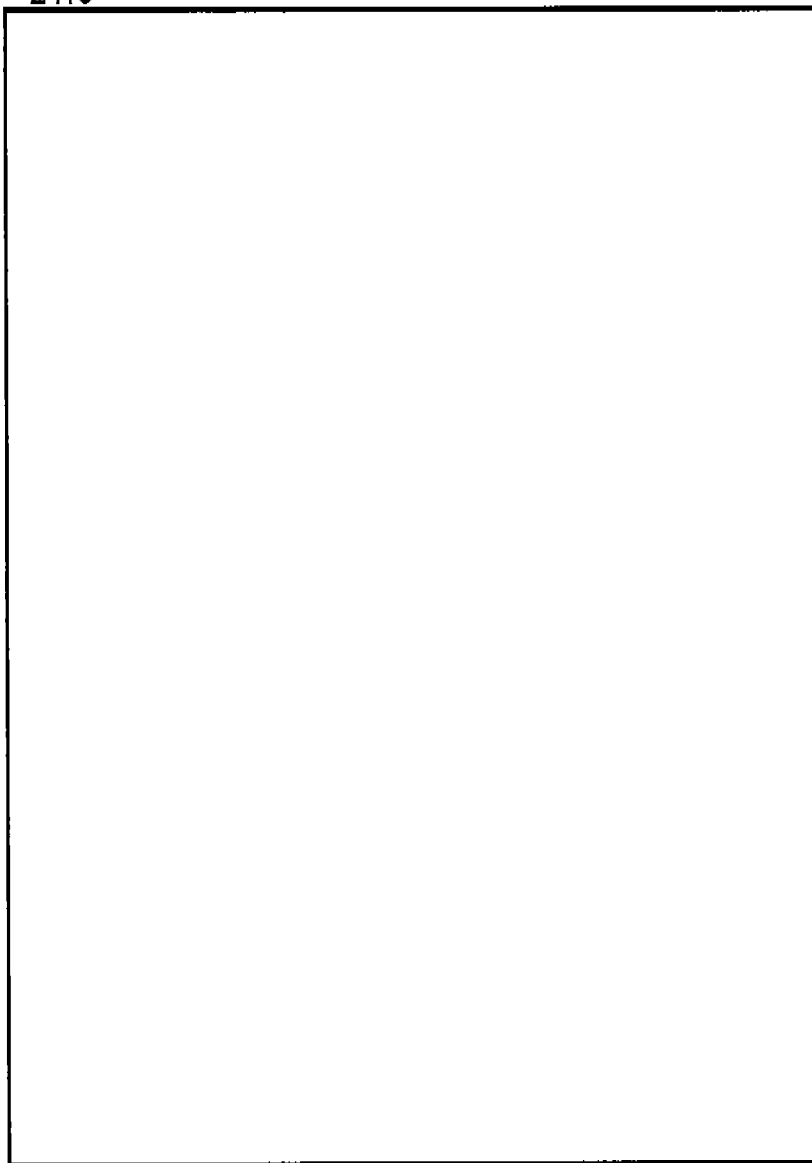


**To:**  
Director Dr. Dee Bodkins

**Company:**  
WVDE

**Subject:**  
Commnets on the Proposed Policy  
2419

**Fax Number:**  
558-3741

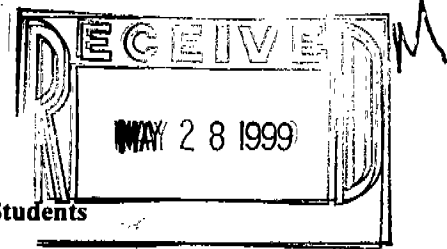


**From:**  
Elaine S. Max

**Company:**

**Fax Number :**  
304 345-3381





**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Johanna McInturff

Title: teacher

Street Address: 200 N. State Street City/State/Zip: Athens, WV 24712

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

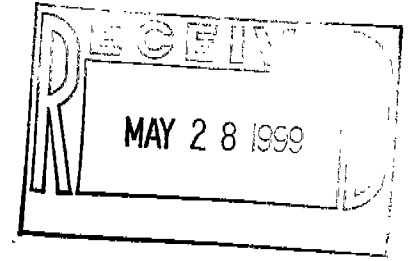
**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

✓ p. 22- I A a exhibit → change to exhibits

**§126-16-5. Individualized Education Program Process**

✓ p. 27 B(a) educatinal → change to educational



✓ §126-16-7. Discipline

What constitutes "removal"? Is "removal" synonymous with suspension?

✓ §126-16-8. Procedural Safeguards

8.1.7 c. . . . to ensure parents have " \* Remove have OR change to state, . . . ensure that parents have . . . ." (p. 65)

8.1.7 f . . . implement he mediation." → change to the (p. 67)

§126-16-9. Accountability

✓ §126-16-10. Glossary

Should the term "suspension" be in the glossary? Should it be replaced with "removal"?

Complete response form by listing each section of the policy.

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Director  
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Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

M

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Lisa Martin, Jackson County Schools

Title: Director of Special Education

Street Address: P. O. Box 770

City/State/Zip: Ripley, WV 25271

**Comments / Suggestions****126-16-1. General**

✓ Requirements applicable to the administration of special education and related services that are addressed in other state board policies such as Policy 2510 are not mentioned in Policy 2419. Examples include: the awarding of a modified diploma, implementation of a functional curriculum, state/county testing requirements including alternate assessment, and opportunity to examine records. All regulations relevant to the administration and provision of special education should be either included in state board policy 2419 or referenced in the appendix as in the previous policy.

**126-16-2. Identification / Referral****✓ 126-16-3. Evaluation and Reevaluation**

Draft Notice of Individual Evaluation/Re-evaluation request includes a statement from WV Code 18-2-5b informing parents of the authorization to bill Medicaid. Section 9.1.3.d of this policy requires parental permission to access public or private insurance. Will this form be revised to obtain permission to bill Medicaid as well all permission to complete the evaluation?

**126-16-4. Eligibility**

✓ A statewide format, developed by the OSE, for the SLD Team Report containing the required components listed in 4.1.2.b.C. would be helpful to counties.

**4.1.3. Definitions and Eligibility Criteria:** The purpose statement of this policy espouses the maintenance of federal language. 4.1.3.b. creates a category of exceptionality termed "Behavior Disorders" which is inconsistent with

the federal language that defines "Emotional Disturbance." This terminology is confusing to general educators and administrators in dealing with behavioral issues of students who are socially maladjusted (i.e., conduct disordered or other) and, by definition, not eligible for special education and related services. This language needs to be consistent with federal language and clarified for LEAs in making determinations of eligibility within this category.

The OSE needs to address the category of Developmentally Delayed. It is very difficult and unfair to identify young children as mentally impaired. Identification and programming for students who exhibit developmental delays should address delays evidenced by environmental factors.

If *economically disadvantaged* continues to be included as part of the OSE eligibility criteria for exceptional gifted, a definition should be included to ensure consistency of implementation.

4.1.3.f.D.e. requiring the annual review of the Gifted Four Year Plan for non-exceptional gifted students has been stricken from the policy. Provisions should be included somewhere in state board policy that address requirements for implementation and review of this plan which is still required as indicated in item 4.1.3.f.D.d.

The distinction between mild, moderate, and severe mental impairments has been removed. What guidelines are to be utilized for purposes of reporting, caseload determinations, and staffing? Clarification needed.

#### 126-16-5. Individualized Education Program Process

5.1.5.g.A-D (Preschool Placement Options) are inconsistent with the LRE terminology for preschool listed in Section 6.1.5.b.J.

5.1.5.f.E. moves home/hospital instruction from Administration of Services, where it was considered an extension of the IEP, to be included under Special Education: Out-of-School-Environment (OSE) as a placement option. This "change of placement" requires an IEP team meeting to change the student's placement to OSE and then from OSE back to the previous IEP placement. This poses an undue hardship for the parent as well as the LEA. It is difficult enough to schedule annual reviews and additional meetings as needed for discussion of programmatic issues and progress. Home/hospital instruction should continue to be considered an extension of services outlined on the current IEP with the appropriate medical documentation from the physician.

#### 126-16-6. Administration of Services

6.1.5.b.J. Time allocations and caseloads are referenced by LREs from the current state board policy rather than the placement options for Preschool Special Needs indicated in 126-15-5 Section 5.1.5.g.A-D.

6.1.5.b. PROPOSED caseload determination is not feasible. Having collected data and computed allowable caseloads with the proposed [five point] weighted formula, it appears to be unrealistic for MI teachers who have special education: separate class configurations, as well as for BD teachers who have students with high needs for monitoring, intervention, and implementation of behavior management plans. Even with weighting, allowable caseloads are not an accurate reflection of available time for implementation of identified student needs. Although there are problems with the current caseload determination, I believe a defined caseload is preferable to the weighted formula which is ambiguous and relies too heavily on subjective factors such as time spent on IEP meetings, Medicaid billing, etc. (Data attached). The application of a weighted formula creates great potential for manipulation to occur (which may or may not be based upon student need). If such a formula for caseload determination were to be mandated, WVDE would need to address additional positions in the state funding formula.

6.1.6.a. states, "Before a public agency places a student with an disability... Should be a disability. Same error in 6.1.8.a. ...services to a student with an disability.

6.1.7.j.A.b. references Section 6.1.6.a-e. There is no Section 6.1.6.e. - Home/Hospital Instruction was moved from this section.

6.1.7g.A. and 6.1.7.j. discuss a "services plan" for private school students. Clarification needed as to the components of a services plan if this is different from an IEP.

#### **126-16-7. Discipline**

More specific guidelines are needed for the determination of change of placement as constituted by multiple suspensions and for the determination of manifestation. What was too restrictive is now too broad. It will be difficult to monitor.

#### **126-16-8. Procedural Safeguards**

#### **126-16-9. Accountability**

9.1.3.d. OSE needs to provide recommendations for procedures to obtain parental authorization for accessing a parent's public (including Medicaid) or private insurance.

#### **126-16-10. Glossary**

10.39 The definition of ESY is too vague. I understand the attempt to maintain federal language; however, the SEA and LEA are obligated to expand upon that language in order to develop useable policies and procedures. The ESY definition is ambiguous and requires clarification, both for parents and LEAs.

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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**FAX: (304) 558-3741**

M

Comments on the proposed revisions of Policy 2419 from Bob Miller,  
Mineral County Schools

✓ Gifted Eligibility p 16 [removal of old item (e) Eliminating the requirement for an annual review will save time and paperwork. Procedures for revisions should be specified in county procedures (since it is not addressed in Policy 2419).

✓ IEP Content p 27 [a.D.] Statement should read.....and in the activities described in C above.

IEP Content p27 [a.E.] Short benchmarks are a great idea. However, even if the benchmarks are of a standard length, benchmarks should be separated from short term objectives. Everything written about benchmarks, especially in the Appendix A indicates that they are an alternative to short term objectives and so do not have to include objective criteria, evaluation procedures or schedules. Benchmarks are different from objectives. A separate statement for benchmarks should be developed.

✓ Preschool Special Needs p42 (B) Center Based Programs The inclusion of a twelve hour minimum for all students attending a center is a violation of LRE principles. It does not allow for individualization; it mandates a program that is illegal because it is based solely on the "availability of special education placement options". The 12 hour minimum should be eliminated.

Private School Placements by Parents p 48 A statement needs to be added that for the purposes of Policy 2419, Home-school students are not considered private school placements. IDEA-97 requires extensive financial manipulations to determine the amount of services required for these placements and consideration of home-school students was not contemplated in the development of the law.

✓ Regarding BIP reviews p53 e. On the second line you have inserted the word "individually" which seems to help clarify a potentially messy procedure.

(29)

- ✓ Complaint System p84 (d) (A) An additional phrase at the end of the first sentence, ".....such an investigation is necessary" or if requested by both the complainant and the school system. [The complexities of some issues need a freeflowing discussion on site to determine if program delivery has actually been met, for example].
- ✓ Complaint System p85 Somewhere between (D) and (e) the federal register requires "**Negotiations**" but the phrase is left out of Policy 2419. As a requirement it must be included.
- ✓ Definitions, Special Transportation p103 The third line, to be politically correct should read, "students with disabilities" and not disabled students.

Bob Miller

**COMMENTS ON POLICY 2419**

**Sandra McQuain, OSE**

The following comments/suggestions were made in a discussion of with mediators and due process hearing officers:

Discipline - Include procedures for documenting circumstances in which a shorter (than 10 day) notice of IEP meeting is necessary for meeting discipline requirements. This may be a local procedures issue. Ten day notice is not reasonable under some circumstances due to conflict with other timelines.

8.1.10 Mediation

Increase the overall time for mediation to take place after receipt to 20 days and decrease the number of days given to a county to forward the initial request to WVDE.

Include a statement that mediation must be completed as soon as possible, (and within timeline) so people will understand the timeline is a maximum (can be conducted sooner).

P. 76 - "paragraph d" should be "e".

P. 76 - Require the LEA to provide the same notice of a hearing request as parents.

Thank you for the public hearing at Capitol High School, WV  
Special thanks to Mary Pat Ferrell & John Huxley  
for helping me to better communicate & organize  
my comments, questions, & concerns.

**Policy 2419: Regulations for the Education of Exceptional Students**

Sincerely,  
Marilyn Wolfingbarger Nichols

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Marilyn Wolfingbarger Nichols

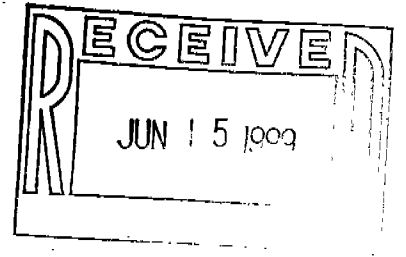
Title: Parent with Kanawha County Schools Parent Resource Center

Home  
Street Address: 4704 West Washington Street City/State/Zip: Charleston, WV 25313

**Comments / Suggestions**

**§126-16-1. General**

None



**§126-16-2. Identification / Referral**

None

**§126-16-3. Evaluation and Reevaluation**

None

**§126-16-4. Eligibility**

See attached 5 comments.

**§126-16-5. Individualized Education Program Process**

None

Thank you for the public hearing at Capital High School. A!  
Special thanks to Mary Pat Ferrell & John Huxley  
for helping me to better communicate & organize  
my comments, questions, & concerns.

Sincerely,  
Marilyn Wolfingbarger Nichols

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Marilyn Wolfingbarger Nichols

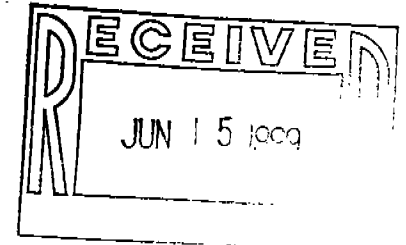
Title: Parent with Kanawha County Schools Parent Resource Center

Home Street Address: 4704 West Washington Street City/State/Zip: Charleston, WV 25313

**Comments / Suggestions**

**§126-16-1. General**

None



**§126-16-2. Identification / Referral**

None

**§126-16-3. Evaluation and Reevaluation**

None

**§126-16-4. Eligibility**

See attached 5 comments.

**§126-16-5. Individualized Education Program Process**

None

§126-16-6. Administration of Services

*See attached 7 comments.*

§126-16-7. Discipline

*See attached 1 comment.*

§126-16-8. Procedural Safeguards

*See attached 8 comments*

§126-16-9. Accountability

*See attached 3 comments.*

§126-16-10. Glossary

*See attached 3 comments.*

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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FAX: (304) 558-3741

## Policy 2419 Regulations for the Education of Exceptional Students

### Comments / Suggestions

#### 126-16-4 Eligibility

1. Page 15 under A Please name the 4 core curriculum areas or place a reference where they are contained in this or another document. For example: reading may be a core curriculum area in Elementary school, but reading is not a subject in the secondary grades. Perhaps the core curriculum area would be English.
2. Page 15 under C.(b) It appears from this statement that a student can be identified as Exceptional Gifted in grades 9 - 12 based on a low family income. (As defined in the public agency's policies and procedures). This statement does not explain how a county would identify these students: perhaps based on free or reduced lunches or if the county is obligated to attempt to identify these students.
3. Page 15 under C.(c) It appears that a student who is "underachieving" can be identified as Exceptional Gifted. A definition of underachieving needs to be given. One person may say all "B"'s is underachieving for a very bright student. Someone else may insist that underachieving is a "C" in a single subject.
4. Page 16 - 18 under g. The mild, moderate, and severe labels for mental impairment are discontinued, yet on page 40 these labels are used to identify caseloads. This is inconsistent.
5. Page 16 under (d) "The implementation of this plan is required" No where in this document does it address any procedural safeguards for parents if the school does not implement the four year plan. This needs to be addressed here, or somewhere else in Policy 2419.

#### 126-16-6 Administration of Services

1. Page 36 under 6.1.2.a. "The student's IEP will be accessible ...." Parents complain that the IEP is accessible to those who are NOT responsible for its implementation. Parents believe this is a confidentiality issue. Please explain in this section, or another section that the IEP is not to be given to those who are not providing services to the student.
2. Page 37 under 6.1.3.b. The statement about "minimum certification standards" needs to explain whether a "permit" qualifies as minimum certification standards, and if so, how long the permit status is available.

3. Page 41 under (c) Combination Program. This is my greatest area of concern. How the maximum caseload will be determined needs to be addressed. For example: A classroom with 6 mild MI students and 2 moderate MI students. On the previous page there is a maximum caseload of 8 mild MI students, but if you had 6 mild and 2 moderate students, it would appear that the caseload would be exceeded. This needs to be a ratio of some sort so that a caseload can be determined. For example: 2 Mild MI = 1 moderate MI, or 2 moderate MI = 1 Severe MI.

In my son's elementary combination program there is 1 autistic, 1 orthopedically impaired, 1 ADHD, 1 LD/behavior disordered, and 4 mild MI in one class spanning grades 2 through 6 during one session. Most programs, outside the resource room setting, are combination programs. This is complicated, but a way to determine maximum caseloads needs to be addressed. Otherwise, these programs are "dumping" grounds for hard to serve students, or in small schools where the regular educator does not want to have any ADHD or LD students in their class. I think that the language on page 44 - 45 about minutes per week and a rating scale would be an improvement in this section. Please address caseloads. This is a concern for both parents and educators.

4. Page 42 last sentence on the page. I believe that "eligible" students needs to include children who are speech delayed. Currently, they are served in the same session, but not included in the caseload count.

Also, Preschool teachers are overwhelmed with multiple disabilities and young children with feeding/toileting/ and behavior issues. This caseload needs to reflect something other than "head" count. The severity of the disability needs to be addressed. We are asking them to "educate" when there is barely enough time to feed/toilet, in other words "safely babysit".

5. Page/44 - 45 Rating system It appears that this rating system applies only to the TBI label and will not be effective until July 1, 2000. I believe that this rating system could be used in other categories as well. The IEP shows minutes, and this would be easier to calculate caseloads.

6. Page 49 e. This entire sentence is unclear. I cannot find 6.1.6.a.-e. Perhaps it is 6.1.6.A-e (There is a difference in: a and A in this document). "Consultation" needs to be defined. A formal meeting needs to occur. The word "consultation" appears to mean that the county can simply respond in a phone call and say "No, we will not serve this private school student.")

7. Page 50 C. This statement mentions that transportation costs can be calculated to see if the requirement of 6.1.6.b has been met. This concept of "calculating" and how it is determined that private school students are selected for services is entirely left out of this document. Policy 2419 needs to explain how the number and amount of services for private school special needs students will be determined. It should be on a percentage basis by disability, or total amount of students needing services in the private schools, or based on cost etc. This needs to be addressed. The counties also should be required to report the number of students by private school or homeschool, the disability, types of services provided etc. Without some sort of "calculating" mechanism a county could simply say "We've met our quota." This needs to be public information. Keeping this section vague, only opens things up for interpretation and lawsuits.

#### 126-16-7 Discipline

1. Page 55 7.1.4.a Dangerous weapon needs to be defined in this document. I realize that every possible item that can be used as a weapon could not be listed, but perhaps it needs to state something about a "verbal or gestural threat". Parents complain that their child can be using something, such as a nail clipper, in an inappropriate manner, but not with a verbal or gestural threat. Please explain this or put a reference to another document so that parents can explain to their children with special needs what is not acceptable behavior etc.

#### 126-16-8 Procedural Safeguards

1. Page 59 8.1.1.a A reasonable time needs to have a specific amount of days. The county may say that two days before changing a child's placement is "reasonable". But a parent may believe that at least 5 days, or even 10, is reasonable so that they can evaluate the situation to see if they want a "stay-put" or some type of mediation. Otherwise, a parent may feel forced to take their child out of school, rather than put them in, what they feel, is an inappropriate or unsafe setting.
2. Page 61 H. This sentence is unclear. Unilateral placement needs to be defined.
3. Page 63 e. The sentence "may continue to pursue those evaluations" needs to be changed to "Shall". Otherwise, students who need services will not be evaluated, and they will continue to fail. Parents have the right to refuse, but they should be required to explain exactly why. The county should be required to pursue mediation, or even Due Process, if it is in the best interest of the student.

4. Page 66 b “Who will be in attendance” needs to be further clarified. It should include the persons’ expertise or title. For example: Mrs. Smith may be a classroom teacher, or a psychologist. The parents need to know. Also there should be an explanation that if the county has other, or additional personnel in attendance that are not listed on the written notice that the parent must agree to their presence, or they will be required to leave the meeting. Parents complain that county’s will notify them of perhaps 4 personnel, and then will also bring the county attorney, the Superintendent, etc. The parents feel overwhelmed. The language should state that the parent must be FULLY informed of ALL persons and their titles. The county may bring additional or substitute personnel (For example: Mrs. Smith the psychologist was to come, but is ill so another psychologist is attending) but the parent has the right to agree or disagree with their attendance. If the parent disagrees, then the personnel must leave the meeting, or the county must set up another meeting at a later date, with proper written notice, to include these additional personnel.
5. Page 74 H. The language here says “may be asked to sign a confidentiality pledge”. A statement about enforcement or some penalty needs to be stated in case the county or the parent violates this confidentiality. I believe this is difficult to enforce. Parents will naturally want to tell their relatives etc. I believe the part about “not be used in evidence in any subsequent due process hearings” can be retained. But to expect total confidentiality is unenforceable without spelling out specific penalties.
6. Page 75 C. “A party” needs to explain that a parent has the option to go directly to the WVDE and request mediation, rather than depending on the next statement D which requires the public agency to forward the request.
7. Page 75 G. I would like to see a statement added that information about mediation, such as the number of mediations by county that came to an agreement or were terminated, general issues, etc. be reported to the West Virginia Advisory Council for Exceptional Students and be made available for public review. This could be a good tool to evaluate the mediation process.
8. Page 78 D. “Obtain a written or, at the option of parents, electronic, verbatim record of the hearing;” and C. “Obtain the record of the hearing and the findings of fact and decisions at no cost.”

These 2 statements need to be clarified. One county has said that the parent can choose to have the electronic verbatim record taken, by the county can choose to provide only the written record (which is not verbatim) at no cost. Please explain that the verbatim record, if chosen by the parents, is available to them at no cost.

126-16-9 Accountability

1. Page 85 D. "The awarding of monetary reimbursement" needs to be explained. It needs to be addressed by severity of violation, or a violation occurring over an extended period of time, or exactly what type of violation would be awarded a monetary reimbursement.
2. Page 86 d. This should include a statement that a parent may request a copy of the billing that is submitted to their private or public insurance so that they can compare it to the services specified in the child's IEP.
3. Page 87 j. This statement (without any written exclusions) appears to imply that a private or homeschooled special needs student could participate in extracurricular activities. Yet counties have refused participation to private or homeschooled special needs students. This needs to be plainly addressed.

126-16-10 Glossary

1. Page 92 Economically disadvantaged This term is deleted here, yet retained in the eligibility of Exceptional Gifted. It should be kept in this glossary.
2. Page 96 Meeting This definition tells what a meeting "is not". This needs to be defined in more positive terms.
3. Page 106 - 110 The references to these resources need to be retained so that parents can be informed about other regulations that affect their child's education.

P

**Dee Bodkins**

---

From: Toni G Parsons <tgparson@access.k12.wv.us>  
To: 'dbodkins@access.k12.wv.us'  
Subject: Policy 2419 Comment  
Date: Friday, June 25, 1999 2:48 PM

Dr. Bodkins,

I have a few questions, comments and suggestions that I hope you will consider. They are as follows:

- 3 Page 5, D. audiologist should be singular.
- 3 Page 6, b. Delete "When evaluating a student with an exceptionality,"
- 3? Page 7, C. How can a team whose membership meets Sec. 5.1.2.a conduct its review without a meeting?
- 4 Page 8, a. Change Eligibility Committee to Eligibility/IEP Team because the federal regulations never mention EC and the IEP Team can serve many functions including determining eligibility. Consider modifying forms to be consistent.
- 4 Page 9, f. How can an EC determine whether or not the discrepancy "is not correctable without special education..."? How long should it take for special education to correct the discrepancy?
- 4 Page 15, (A) & (B) What score on an achievement test or what kind of classroom performance would indicate "that the student requires specially designed instruction..."? Would it be a standard score above 130 or below 100? Would it be doing above average work or below average work?

Please forgive me for not submitting my comments on the appropriate forms and in a more timely manner.

Toni

**Dee Bodkins**

---

From: Margi rockwell <margi614@yahoo.com>  
To: dbodkins@access.k12.wv.us  
Subject: Proposed revisions to Policy 2419  
Date: Friday, June 25, 1999 2:26 PM

R  
✓

After reading the proposed revisions, I have some concern with the following:

126-16-7

7.1.1. Since the behavior of disabled students (ADD and BD in my experience) is directly affected by their disability, this regulation sets students up for failure. It would more greatly benefit students if there remains a limit to the number of days a disabled student may be suspended within the school year (i.e. 10 cumulative days per year.)

Constant negative discipline does nothing to improve behavior after excessive use of suspensions. Not only does it further frustrate the child beyond the existing frustrations of his/her disability, it also discourages the child until finally he/she becomes another drop-out statistic (as was the case of my own 16 yr. old son and 4 other ADD, BD students in our acquaintance in Berkeley Co.)

Although 7.1.3. allows for this to some degree, there are many areas of behavior that may be (and have been) misinterpreted under this clause by school personnel, thus resulting in the inevitable, continual suspensions of disabled students.

Please consider this.

Thank you for opportunity to voice my concerns.

---

Do You Yahoo!?  
Get your free @yahoo.com address at <http://mail.yahoo.com>

**Dee Bodkins**

---

From: Margi rockwell <margi614@yahoo.com>  
To: dbodkins@access.k12.wv.us  
Subject: Proposed revisions to Policy 2419  
Date: Friday, June 25, 1999 2:26 PM

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126-16-7

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Please consider this.

Thank you for opportunity to voice my concerns.

---

Do You Yahoo!?

Get your free @yahoo.com address at <http://mail.yahoo.com>

**From:** Annette C Carey <acarey@access.k12.wv.us>  
**To:** pcarte@access.k12.wv.us <pcarte@access.k12.wv.us>  
**Date:** Thursday, June 17, 1999 10:38 PM  
**Subject:** Fw: eligibility criteria

---

R

Pam

Please add these comments to 2419 and let me know if this works or not.  
You're the first person I tried with my e-mail at home.

Thanks

-----Original Message-----

**From:** Christine Roman <roman@fs1.sched.pitt.edu>  
**To:** [acarey@access.k12.wv.us](mailto:acarey@access.k12.wv.us) <[acarey@access.k12.wv.us](mailto:acarey@access.k12.wv.us)>  
**Date:** Wednesday, June 16, 1999 6:20 PM  
**Subject:** eligibility criteria

>Dear Annette,  
>Here is my suggestion for adding functional visual problems to  
>eligibility criteria in West Virginia:  
>  
>e) adverse educational performance as determined by a  
>formal functional visual assessment conducted by a certified teacher  
>of children with visual impairment  
>  
>I think this pretty much says it -hope this isn't reaching you too  
>late---things still pretty crazy. Looking forward to meeting with  
>you & Ron when you get back from your vacation (I'm jealous)  
>  
>Chris  
>  
>Dr. Christine A. Roman  
>Vision Education  
>Special Education Program  
>Department of Instruction and Learning  
>School of Education  
>University of Pittsburgh  
>  
>412 - 649-1317

R

**From:** Dorothy J Rhodes <drhodes@access.k12.wv.us>  
**To:** pcarte@access.k12.wv.us <pcarte@access.k12.wv.us>  
**Date:** Friday, May 21, 1999 10:01 AM  
**Subject:** Policy and Procedure Comments

---

Dr. Dee Bodkins

I am a Preschool Specialist in Jackson County. I have been asked to complete the worksheet documenting the total service time spent for each child. While reviewing the worksheet I noticed there was not adequate categories pertaining to indirect service time spent in relation to the children. I added several categories to the list.

These include:

- |                                |             |
|--------------------------------|-------------|
| 1. child find screening        | 14hrs.      |
| year                           |             |
| 2. data collection             | 36hrs.      |
| year                           |             |
| 3. writing test reports        | 48hrs.      |
| year                           |             |
| 4. progress reports            | 64hrs.      |
| year                           |             |
| 5. OT/PT consultations         | 18hrs.year  |
| 6. paperwork for meetings      | 30hrs.year  |
| 7. medications/documentation   | 25mins.wk   |
| 8. parent involvement planning | 2hrs. month |
| 9. parent workshops            | 3hrs. month |
| 10. home visits                | 16hrs.      |
| year                           |             |

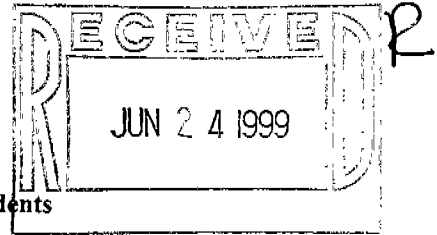
There is much more time spent at home because of the lack of time for indirect services that must be completed for my children. If this worksheet is being used to help determine/change caseloads, then I'm certain there is a formula already drafted that takes into account the hours listed in the categories above. The five categories listed on the worksheet is truly only half of the hours spent indirectly.

Thank you for your time

Dodie Rhodes, Preschool

Special Needs Specialist

100 School Street  
 Cottageville Elementary School  
 Cottageville WV, 25239



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Elizabeth Riggall - Sissonville H.S.

Title: Special Ed. Department Head & Faculty Senate Chair

Home Street Address: 248 Sunset Drive City/State/Zip: Charleston, WV, 25301

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

§126-16-6. Administration of Services *Unclear---*

- New Case loads - who will pay for additional teachers??
- (F) - How are aides for self-contained classrooms assigned. Does each IEP have to call for an aide? Need to have this subject Clarified!!

§126-16-7. Discipline

- 7.1.1 (C) - *is this the case manager??* is the student's special education teacher - the Case Manager? This needs to be Clarified - *In some* High Schools Case Managers do not get invited to sit in on Disciplinary Proceedings for students and this needs to be mandated.

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

| Dr. Dee Bodkins |  
 Director  
 Building 6, Room 304  
 1900 Kanawha Boulevard East  
 Charleston WV 25305-0330  
 e-mail: pcarte@access.k12.wv.us  
 FAX: (304) 558-3741

R

**Dee Bodkins**

---

From: Daniel W. Radko <dradko@gcnet.net>  
To: dbodkins@access.k12.wv.us  
Subject: Caseloads  
Date: Wednesday, June 23, 1999 5:58 PM

Dr. Bodkins,

In the up coming caseload changes I feel they are to vague. When a director of SpEd and the building administrator work on a caseload I feel they will base it on how can we cover the students with the least amount of staff. The almighty buck will rule and the students will suffer. Under the old regulations when working with rating 3 students a teacher knew the caseload limits during a class. Now we leave the caseloads up to each county to establish and maintain. It needs to be clearly spelled out and unified through out the state. Forty students per teacher is to many and specific caseload during classes needs to be defined. If this is the best the new regulations can come up with let us return to the past caseload regulations until there are regulations which are more precise.

Thank you for letting me respond to this matter.

Daniel W. Radko

Teacher of EMI Students

9

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Gerry R. Sokol / Jefferson County Schools

Title: Director of Pupil Services

Street Address: Box 987 City/State/Zip: Charles Town, WV 25414

**Comments / Suggestions**

§126-16-1. General ✓ Make the document easier to read - to many capital and small letters to follow.

**§126-16-2. Identification / Referral**

✓ §126-16-3. Evaluation and Reevaluation 3.1.3 D.d.A (pp.7) Using the term IEP Team prior to the student being found eligible will add confusion to the process. Keep the term MDET in place.

✓ §126-16-4. Eligibility- g. Mentally Impaired (pp16) - BRAVO - levels of impairment should be removed. However, 6.1.a.G (pp40) forces the programming of students according to their IQ. Remove wording of mild, moderate, severe, profound from this section. Type of services should be delivered because of student need and not an IQ number.

✓ §126-16-5. Individualized Education Program Process 5.1.1b (pp,24) Keep this wording in. However, the state IEP form does not lend itself to "review only no revision needed" provisions.

5.1.4 f (pp30) Do not force LEA's to place this statement on the IEP. Allow LEA's to use student handbooks, procedural safeguards or general public notice to convey this statement. This one little part will continue to add to the length of an already long IEP meeting.

G Sokol page 2

✓ §126-16-6. Administration of Services 5.1.4 b. B. (pp44) Caseload numbers are confusing. This will also force the LEA's to place minutes per week on the IEP. This can be a litigation nightmare. Return to the old way - it was working.

✓ §126-16-7. Discipline - pp 50~59 Entirely too long. The extra details only adds confusion and makes the process cumbersome. Suggest a 4 step process  
1. Discipline is same for all students, 2. Any accumulated days beyond 10 days LEA must provide some instruction. 3. three or more incidences result in disciplinary action must first have a manifestation IEP meeting.  
4. Continue with discipline/have a change of placement. All safe school violations must be handled the same way as for non-disabled.

✓ §126-16-8. Procedural Safeguards

8.1.2.a(pp.61) This is overkill for sending notices home. Beyond the initial notices; permission to evaluate and 1st meeting, reevaluation notices, and exit IEP notice is not needed. Statement should be placed on all notices stating that parents can receive a copy of their child's procedural safeguards by contacting their child's school principal.

✓ §126-16-9. Accountability - 9.1.2. M (pp81) monitoring process examines the writing of the IEP not the quality of instruction. Too much emphasis is placed on the depth of the IEP. Too much quality instructional time is lost making sure a comprehensive well written IEP is in place for the monitoring team. Each year we move further away from instructional time.

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

# Jefferson County Board of Education

Post Office Box 987

110 Mordington Avenue

Charles Town, West Virginia 25414

Tele: 304-725-9741

Fax: 304-728-9274

Superintendent:  
David W. Markoe

Board Members:  
C. Larry Togan, President  
Doris Cline, Vice President  
Peter H. Dougherty  
Paul R. Marzuk  
Peter Morgens

Date: 6/25/99

To: Dr. Dee Bodkins  
Director  
WV Dept of Education  
Division of Special Education

From: C. Sokol  
Jefferson County Schools

Comments: Commt To 2419

Number of Pages (including cover) 3

Add  
1061-7  
Context

Please use accepted outline form under each section

3.1 - wordy appears to be unclear since everyone who moves from grade to grade is supposed to have mastered WV LGO's. We would like clarification of the following terms "even though advancing grade to grade" also



also the item seems to refer to all as mentioned in the 2nd line of 3.1, but the last line on page 3 indicates that private, religious, + high mobile students are the ones referred to

3.5 3.1.2

E. The parentheses after physically disabled imply that the orthopedically impaired, other health impaired, + traumatic brain injured are always physically disabled which they are not. Remove the parentheses + use commas.

Also it implies that an M.D. must be at the meeting when in fact the M.D.'s written report or record could serve the same purpose.

p. 7 C The term "may conduct its review without a meeting" is unclear and indicates that one may carry on an evaluation & subsequent review without others

B. (at the bottom of the page) When the student is suspected of having only...  
At this point there is no IEP team because the child has not yet been made eligible. There is only a MDET team so IEP should be replaced with MDET

p. 8 4.1.1  
a. Define who the professionals need to be & ~~define~~ parent participation

p. 9 <sup>should include</sup> B (c) due to high mobility of student or poor attendance

p. 10 (b) written certification seems to mean an additional report

p. 12 b. Behavior Disorders should be changed to emotionally disturbed to align with the federal regs

p. 15 The definition of Mental impairment should delineate this into mild, moderate, + severe to allow caseloads to be determined as noted later in the document (e.g. on p. 40)

Achievement should be addressed

p. 14 ✓ Under Defhd + B. Please include the ability to use ~~or~~ verbal + non verbal scale of a conformance to a test because you are excluding the <sup>deaf</sup> ~~hearing~~ and hard of hearing and certain disabled students

p. 15 ✓ (b) "historically underrepresented..." sets no standards

p. 22 ✓ (a) Please define + give examples of ~~the~~ special considerations

p. 24 TBI

A. Brain injuries include acquired brain injuries such as brain tumors which are degenerative but are legitimate when, e.g., they are removed. Please include acquired brain injuries + exclude degenerative

P. 24 B(a) Please allow neuropsychologist to be changed to neuropsychologist who can direct or consult with school psychologists or interpret the test results of school psychologists.

P. 25 5.1.2 a. B. Please remove the "and" in the term "including the referring and, when entitled, the receiving teacher" because the receiving teacher isn't known for the following year when IEP's are done at the end of the year

P. 26 5.1.3  
The IEP seems to indicate that it could fund a student whose only impairment is written language

P. 27 B(e) educational is misspelled

P. 29 A. There is inconsistency in the use of the age 14 in addressing transition (On page 26 e b it says any age) (On p. 30, A, if student age 14 or older)

P. 30 j. "a particular device" implies a brand name + possibly many dollars. Please change it to "particular type of device"

P. 34 H. This is not clear

P. 47 A Home-bound students considered medically fragile appear to be without service

p. 59 8.1.1 a. Please clarify the definition of written notice. Written notice could be a hand-written note of the teacher or it could be a formal form.

p. 62 8.1. Parental Consent  
b. Please explain the phrase "When a student w/ a disability transitions from Part C to Part B." It is confusing.

p. 63 C(a)(b)(c) These statements indicate that one MUST make multiple phone calls, send multiple notes, AND visit homes. Please make it and/or as on p. 67 B(b).

p. 65 B(b) Obtain written parental consent for initial evaluation and reevaluation should also include "initial placement."

p. 66 B(b) "who will be in attendance" seems to imply that specific people must be named. Surely, you mean particular positions.

F. The mediation should read the mediation

08 B + C appear to be subordinate to A. (it would make A more clear)

p. 86 d. If each public agency needs to have a way of assessing a parent's insurance, it seems that the school system will no longer have to pay for suggestions regarding services.

p. 87 E. "It is the responsibility of the public agency to provide the special equipment... required to implement these regulations. There are procedures in place (assistive technology evaluation) that determine whether certain pieces of equipment are required. Please add that so the IEP doesn't become a wish list."

p. 89 10.8 From our perspective the definition of annual goal seems to include that of an objective. Please distinguish.

p. 95 Instead of limiting this to Africa Americans + Hispanic, please use an all-inclusive term such as minorities.

5

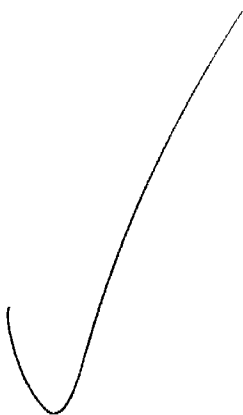
**Dee Bodkins**

---

From: Virginia G Simmons <vsimmons@access.k12.wv.us>  
To: Dee Bodkins <dbodkins@access.k12.wv.us>  
Subject: Policy 2419  
Date: Friday, June 25, 1999 1:45 PM

P. 7 B (a) change "exceptionality" to "disability" Gifted students are not reevaluated for eligibility p. 7 B (c) add "student with a disability" Gifted students are not reevaluated for eligibility p. 7 B add (e) "except during the eighth grade, a reevaluation for gifted students shall be used for programmatic purposes only and not for eligibility" from Ginny

*Evaluation*



**Dee Bodkins**

---

From: Virginia G Simmons <vsimmons@access.k12.wv.us>  
To: Dee Bodkins <dbodkins@access.k12.wv.us>  
Subject: Policy 2419  
Date: Friday, June 25, 1999 1:52 PM

p. 15 D (b) must be changed to read If determined that the eligibility criteria and/or assessment instruments discriminate against a student because the student belongs to an historically underrepresented gifted population, eligibility for gifted services, described in the public agency's policies and procedures, shall be based upon criteria that complement the definition and eligibility for gifted in this policy.

*Eligibility*

## Policy 2419 Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

**Individual/Organization:** Charles Szasz/Kanawha County Schools

**Title:** Lead School Psychologist

**Street Address:** P. O. Box 630

**City/State/Zip:** Elkview, WV 25071

### Comments/Suggestions

Section 126CSR16 Eligibility Evaluation and Reevaluation

**Page 21 Specific Learning Disability**, The following should be changed: (B) A method utilizing the standard error of the difference scores shall be used only if the technical data (i.e., test correlations) necessary to account for the effects of regression are not available.

As the author of the West Virginia Learning Disability Discrepancy (LDD) software program, I came across a formula last October devised by Reynolds and Stanton (1988) to estimate IQ-achievement (test) correlations when none exists. This formula permits the computation of a discrepancy score using the regression to the mean in place of the antiquated standard error of the difference scores method. The standard error of the difference scores method does *not* allow regression to the mean to be used and instead, employs a simple difference method. The simple difference method is less accurate and over identifies students as learning disabled. I met with Dr. McInturff, who was then the learning disability coordinator, and shared with her the new formula. She approved the inclusion of the formula in the LDD program. The Reynolds and Stanton formula is vastly superior to the old standard error of the difference scores method and should be recommended as the alternative method for computing a discrepancy in the SLD guidelines when there are no test correlations.

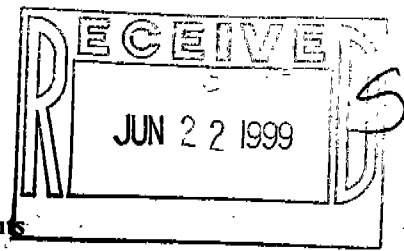
The formula is already included in the LDD program as a test template for intelligence and achievement tests without IQ-achievement correlations. Hence, **the following change is recommended**: (B) The test template for intelligence and achievement tests without IQ-achievement correlations in the West Virginia Learning Disability Discrepancy (LDD) software program shall be used when there are no intelligence-achievement correlations available.

**Page 12, b. Behavior Disorders:** The category Behavior Disorder (BD) should be changed to Emotionally Disturbed or Emotionally Handicapped to avoid the confusion of a student who *has* behavior problems but does **not** qualify for BD services. The label of BD is very difficult for administrators, educators and parents alike to understand that a student exhibiting behaviors problems that are reflective of a conduct disorder or socially maladjustment but is not eligible for BD. The label of BD implies to them that a student who has behavior problems should automatically be made eligible. West Virginia's definition of Emotionally Disturbed mirrors the federal regulations with the exception of the label. It would be far easier to explain to administrators, educators and parents that a student that has behavior problems but does not qualify for these services because he/she is not emotionally disturbed. School attorneys have also strongly recommended that the BD label be dropped in favor of Emotionally Disturbed.

**Page 12, f. Gifted, (A)** The four core curricular areas need to be defined.

**Page 18, Mental Impairment B. (a):** After standard deviation of 15, **add:** or 16. Some intelligence tests such as the Stanford-Binet have a standard deviation of 16. The wording implies that only intelligence tests with standard deviations of 15 can be used in evaluations or reevaluations.





**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kathy Showen / Putnam County Schools  
Title: School Psychologist  
Street Address: 105 Monterey Lane City/State/Zip: Cross Lanes, WV 25313

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

*401.3, F.D.b.  
This is too vague and may give  
LEA's too much leeway in determining  
eligibility.*

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

§126-16-6. Administration of Services

§126-16-7. Discipline

§126-16-8. Procedural Safeguards

§ 1.4.d.c. (b)(c)

Change "and" to "or" for requirement of home visits. This is often impractical and unsafe.

§126-16-9. Accountability

§126-16-10. Glossary

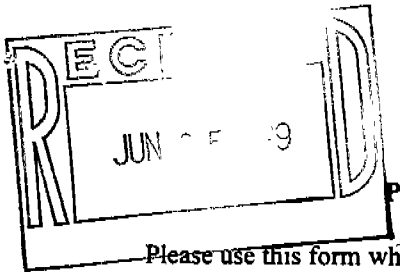
10.23 should be counseling "services", not "skills".

10.43 FBA - add to definition - An FBA focuses on possible purposes the behavior serves for the individual.

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741



5

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Patricia Schaeffer

Title: Parent of Gifted Child

Street Address: 1006 Deerwood Dr City/State/Zip: Morgantown, WV 26508

**Comments / Suggestions**

**§126-16-1. General**

✓ Please return gifted services for all gifted students at the High School level.

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

- ① ✓ Thank-you for learning in re-evaluation at eighth grade (page 8) PLEASE reinstate (page 18) that the 4 year high school plan must have an annual review.
- ② How are we evaluating non-English speaking students?

**§126-16-4. Eligibility**

✓ Please return use of verbal or performance score ~~for~~ instead of full-scale score for LD; economically disadvantaged, NES (non-English speaking). P. 15 Section (b) sounds very nebulous to me.

**§126-16-5. Individualized Education Program Process**

✓ P. 28. PLEASE return the wording - "acceleration shall be the primary consideration . . . ." to the IEP section. We have struggled so long to have acceleration - this is a step backwards

**§126-16-6. Administration of Services**

Pg. 44 - Assignment of case loads. This is unclear as to how my child's teacher will be assigned a case load - is it based on # of children, hours of service per week, what? Something has been left out on this page.

~~§126-16-7. Discipline~~

pg. 34. Section II. - this does not apply to gifted students, who do need to move into a different age group on occasion for acceleration. Please change wording to "special needs/disabled" not <sup>include</sup> gifted

**§126-16-8. Procedural Safeguards**

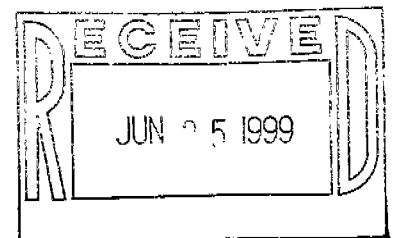
**§126-16-9. Accountability**

**§126-16-10. Glossary**

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741



Wood S  
Yvonne Sautin

Policy 2419:  
Regulations for the Education of Exceptional Students

Comments and suggestions on 6.1.5.b.A. :

- 1.) The State Office of Special Education should work with the staff of WVEIS to develop a system for overseeing the caseload of special educators and SLP's. This could be done by refining the system which already exists and would also assist the state in monitoring caseloads on a continual basis as opposed to once every four years. WVEIS HAS THIS POTENTIAL, LET'S USE IT!! ANY CASELOAD RATING SCALE WILL HAVE A DIRECT FISCAL IMPACT UPON COUNTY SCHOOL SYSTEMS!!!
- 2.) This system could be developed and presented at the annual state conference on the WVEIS system during the second week in June.
- 3.) Much like the long-awaited statewide IEP, this monitoring system would save time for local special education directors (many of whom wear several other hats) by eliminating the need to have a separate stand-alone computer program for determining caseloads. It would also enable state special education staff to provide technical assistance in this area (which is greatly needed if counties are "over the formula" due to special education).

Comments on 6.1.5.b.B, 6.1.5.b.B, 6.1.5.b.C, & 6.1.5.b.D. :

Attached is the data requested by the Office of Special Education regarding the proposed method of calculating caseloads utilizing the 3-point and 5-point scales.

Also provided was the total number of teacher aides for each school and, (in parentheses), the number of aides "over the formula".

Comments:

3-point scale

+++

- 1.) Appears to result in less need for hiring additional staff due to exceeding weighted caseloads.

---

- 2.) Several staff (both teachers and service personnel) will need to be placed on the transfer and reduction-in-force list in order to realign staff.

- |   |   |
|---|---|
| <p>2.) Rating #1 reflects a range of minutes per week that is roughly equivalent to “up to 21% of the instructional day.” This rating appears to reflect a need to increase the opportunities for more students to be served in regular education classrooms.</p> | <p>2.) Does not provide enough flexibility in per documenting student’s need for direct/indirect instruction and supplementary aids and services.</p>   |
|   | <p>3.) Rating #3 reflects a range of of minutes that will continue to reinforce the pullout model for service delivery. The potentially highest rating has been given to a range which can reflect roughly 41% of the instructional day in pullout special education.</p> |

5-point scale

+++

- 1.) Allows for more flexibility in documenting student’s need for direct/to indirect instruction and and supplementary aids and services.

- 2.) Changing the allowable limit of weighted caseloads from 40 to 45 lessen the potential for hiring additional professional staff.

---

- 1.) Appears to result in more of a need to hire additional professional staff due to exceeding weighted caseloads.

- 2.) Even the 5-point rating scale does not reflect the complexity of variances of student needs. This scale still reinforces the pullout model for service delivery.

Suggestions: (6.1.5.b.B., 6.1.5.b.C., & 6.1.5.b.D.)

- 1.) The effective date of July 1, 2000 for determining caseloads using either rating scale should be postponed for one year. Piloting the proposed rating scale may be necessary to “work out the kinks” before implementing it statewide to prevent potential negative impacts. The present system, however, definitely needs to be changed!! Piloting the rating scale system in a large, medium, and small size county next year is suggested. (Wood County Schools would volunteer to be involved in this pilot.)

- 2.) Rating scales need to reflect more reinforcement of direct instruction in the regular education class service delivery model. Both rating scales reflect the pullout service delivery model, but have removed the language to “trigger” an aide. Devise a rating scale that would reflect the complexity of integration at the secondary (middle childhood and adolescent) level. Perhaps having “hard data” from counties will allow these rating scales to be more refined. However, it should be noted that in order to responsibly implement special education in an integrative regular education setting, more special education teachers (not less) will be needed initially. It would be naive to think otherwise. Special education (state and local levels) should be working closely with the federal “class size reduction program” teachers in an effort to collaborate in an integrative setting.
- 3.) Change the allowable limit for weighted caseloads. It appears that 40 is too low a number and may trigger a need for even more speech language pathologists. Raising the number to 45 or 47 may help solve the personnel issues that will arise for SLP’s as well as special education teachers.
- 4.) In order for the building level administrator to compile the ratings for students assigned to a school or area, there will need to be more involvement of principals in the IEP process. In many counties, the special education director chairs IEP’s, not the school principal. This is a good opportunity for building level administrators to have a direct impact upon a student’s education.
- 5.) The timing of the compilation of ratings for special education students assigned to a school or area IS VERY CRITICAL!!! Many counties hold the majority of IEP’s in the month of May. THIS IS ENTIRELY TOO LATE IF THE RATINGS COMPILED FROM THESE IEP’S ARE TO BE USED FOR DECIDING SPECIAL EDUCATION STAFFING LEVELS!! Professional and service personnel need to be notified of the potential to be transferred or reduced before the first Monday in April and also need to be given the opportunity to have a hearing before the board of education before the first Monday in May. Continually monitoring the system for overseeing the caseload of each special educator and SLP (6/1/5/b/A.) is extremely important. Decisions need to be made prior to April to prevent hiring as many “above the formula” staff as possible.

S

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Betsy Scott

Title: Coordinator, OSE

Street Address: 161 1/2 Quarrier St #2 City/State/Zip: Charleston, WV 25311

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

✓ ~~§11.3.b~~ - Change Behavior Disorders to Emotional/Behavior Disorders to prevent current underidentification of students with emotional disorders.

**§126-16-5. Individualized Education Program Process**

W  
8-20

§126-16-6. Administration of Services

Case loads:

CAP on class size would help.

Need to provide some way to prevent overloading of Special Education classes. The new formula would allow 20 resource students at one time or 8 severe kids at one time w/ no provision for aide. System may ~~require~~ result in adversarial relationships to try to get appropriate services.

§126-16-7. Discipline

pg 62  
pg 65

Capitalization errors  
on 8.1.4, b, A+B  
and  
8.1.6a, A+C

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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Director  
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Charleston WV 25305-0330  
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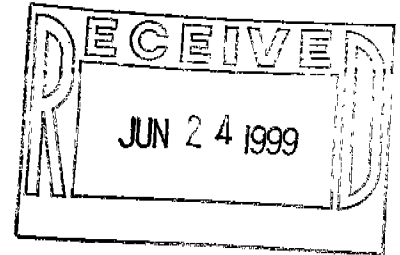
Individual/Organization: Rinda Sartorius & Judy Hansen

Title: Itinerant Teachers of Gifted Education

Street Address: HC 71 Box 464 City/State/Zip: Princeton, WV 24740

**Comments / Suggestions**

**§126-16-1. General**



**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

§126-16-6. Administration of Services

§126-16-7. Discipline

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

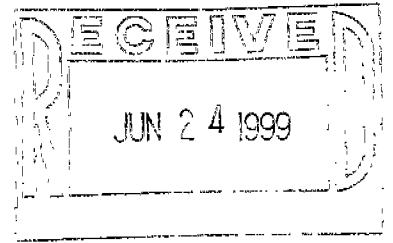
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or  
dbodkins@access  
.k12.wv.us



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: SARAH UMBERGER

Title: BD teacher

Street Address: PO Box 8 City/State/Zip: Maxwelton, WV 24957

**Comments / Suggestions**

**§126-16-1. General**

**§126-16-2. Identification / Referral**

**§126-16-3. Evaluation and Reevaluation**

✓ Re-evaluation is too subjective, I think at the elementary level at least re-evaluation in all assessed areas should be repeated as development does not occur in all kids at the same time.

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

The heart of the IEP process and of special education is the special individual support that we have been able to give my students. although the caseload limits appear to be sensible, they really are fairly irrelevant to me except for the time of year that

**§126-16-6. Administration of Services**

I have to sit down and fill out IEP forms. However, the lack of regulation for service personnel and limits on classroom size is very scary. Since unmandated personnel are usually the first cut during fiscal crises, we, as special educators, may be left to rely on our wits and classroom management skills in maintaining order in large groups of children who

**§126-16-7. Discipline**

have been diagnosed with enough of a disability that at least some resource time <sup>is needed. This</sup> is unfair to both students and staff.

Please, please use some common sense!! While the rest of the world is looking for small classes and instructional aides-

**§126-16-8. Procedural Safeguards**

West Virginia is taking away this asset from the students who need it most!

Thank you -

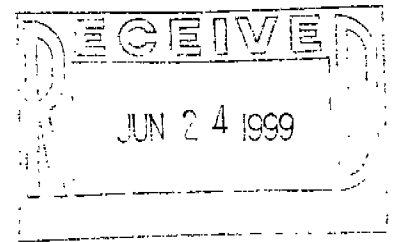
**§126-16-9. Accountability**

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Title: BD teacher

Street Address: PO Box 8 City/State/Zip: Maxwelton, WV 24957

**Comments / Suggestions**

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§126-16-2. Identification / Referral

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**§126-16-7. Discipline**

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Thank you -

**§126-16-9. Accountability**

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§126-16-7. Discipline

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WVA

WEST VIRGINIA ADVISORY COUNCIL  
FOR THE EDUCATION OF EXCEPTIONAL CHILDREN

June 9, 1999  
Boone Career & Technical Center  
Madison, West Virginia

MINUTES

Members Present: Marilyn Barraclough, Judy Robertson (for Dee Bodkins), Becky Cyrus, Lugenia Porter, Debra Simon, Doug Smith and Chris Cook (June 10).

Members Absent: Pam Cain, James Farley, Jane McBride, Kelli Myers, Beth Smith, Betty Smith.

Others Present: Mary Knapp, Michael Sullivan.

The meeting was called to order at 5:30 p.m. by Lugenia Porter. A work session addressing the proposed changes to Policy 2419 began. After considerable discussion, the Council decided that formal comment should include the following issues:

- User Friendliness – Council feels that the revised format will be more difficult for consumers of Special Education services to use. Perhaps using more “bold” fonts to indicate major sections would help.
- Caseload – Council recommends that extensive field testing be conducted to assess the impact of the rating system on CD, Gifted, preschool and timeout services before adopting the proposed rating system.
- Caseload – Removal of per-instructional-period caseload may result in an overloaded teaching situation, particularly in adolescent programs or in programs utilizing block scheduling.
- Caseload – Some Council members expressed concern that, with the removal of language related to aides, some school systems may interpret this as an opportunity to reduce the level of supports currently being legitimately provided by service personnel via IEP's.
- Caseload ( Parental Perspective) – The proposed method for determining caseload leaves the parent no means to observe their child's situation in the instructional setting and then to make a determination about whether or not their child's teacher is within caseload. Assessing caseload compliance becomes a purely administrative process not verifiable by parents.

- Caseload – On page 44, ratings “for each student” should be changed to “ratings of services received” to avoid exchanging one label (BD, SLD, MI, etc) for another (Ex. Rating #1, #2, or #3).
- Name of Exceptionality – Council feels that “ED” should be used rather than “BD”. Rationale: ED is consistent with Federal language ( a stated purpose of 2419 revisions) and is less likely to contribute to general misconceptions about the disability and is also less likely to lead to the typically punitive measures chosen as interventions with this disability group. Council feels the BD/ED issue is much more problematic than the MR/MI issue when used within Policy 2419.
- Eligibility (Pg. 15) – Council feels that the new statement (D.b.) related to historically underrepresented populations should be (if not specifically dictated by the OCR decision) made more generic (because under-representation occurs with some other disability categories as well) and moved to the Eligibility Committee Section (after (g) on page 10 might be an appropriate location).
- Change of Placement – item (C) on top of page 54...the phrase “as long as the parent does not object” seems inappropriate and redundant (see “with parent agreement” earlier in this paragraph) and should either be removed or the phrase “with written parental consent” should be substituted.
- Placement of Options (p. 33) – Because Out-of-School Environment placements are becoming increasingly frequent with recent concerns about safe-school’s issues, the term “temporarily delivered” should be operationally defined.

Following this review, Lugenia Porter convened the public hearing session. Mary Knapp, Boone County Special Education Director, addressed Council. Following a general description of Boone County services, she addressed the following concerns:

- \* Teacher preparation programs (graduate and undergraduate) need to improve the transfer of theory to practice for new teachers.
- \* General and special educators have not yet “bought in” to the belief that they have shared responsibility for all students, particularly at the adolescent level.
- \* The new statewide IEP form, according to personnel gathering information, provides no vehicle for collecting the “parental information” section.
- \* Annual review of IEP’s has become problematic because of strict adherence to the calendar year as opposed to the initiation-of-services date.

Following Mrs. Knapp's presentation, Council business discussed in the past and prepared for a vote were addressed. These items included approval of the annual meeting (May) minutes, changes to reflect IDEA-97 and the Executive Director evaluation. Doug Smith moved for approval of the three items, Debra Simon seconded and the three items were approved.

There being no further business, the Council adjourned.

**June 10**  
**Brookview Elementary School**  
**Madison WV**

The June meeting was reconvened for purposes of Annual Report presentation to the WV Board of Education.

W

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

**Individual/Organization:** West Virginia Parent Training and Information

Staff, Regional Parent Trainers, Parent Volunteers, and WVPTI, Inc. Board Members

**Street Address:** 371 Broadus Ave. **City/State/Zip:** Clarksburg, WV26301

**Comments / Suggestions**

✓ **126-16-1. General** – Even though format is SBE, it’s difficult to follow and is not user friendly for the targeted audience. Needs a topical index. Comment period is untimely and will not produce needed results (i.e. teacher/personnel not in buildings to receive copies, PERC’s can’t disseminate to families, etc). List of resources dropped, need put back and parents need ready access to resources. Most do not even know about laws and policies, so they wouldn’t even know what to request or how to get them if they listed them in “some other document”. Granted, Policy 2419 is formatted and aligned with the Federal Statute; however, we in West Virginia have a very different population that we serve and Policy 2419 should address the needs of West Virginians. We’ve received many questions about the funding formula, but have nothing to provide to anyone.

**126-16-2. Identification / Referral**

**126-16-3. Evaluation and Reevaluation**

✓ **126-16-4. Eligibility** Page 12, add emotional to behavior disorder. Page 20, k.A. change significant deficits to imperfect ability to match statute language. Also addition of language of “including perceptual brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. Page 21, C. 1. Change sensory to visual, hearing, or motor disability. C. 3. Add emotional disturbance.

✓ **126-16-5. Individualized Education Program** – Page 28, I. Add the language “in addition to report cards”.

## **126-16-6. Administration of Services**

✓ **126-16-7. Discipline** Page 52, 7.1.1. b. correction in language from 10 school days to 10 consecutive school days. 7.1.1.d. Change in language to "either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement. Page 53, change language to reflect statute – on 7.1.1. e. to read "if one or more of the team members believe that the modifications are needed, the team shall meet to modify the plan, and its implementation to the extent the team determines necessary. 7.1.2.b.B. Change in language from "10 business days" to "10 school days". Page 55, 7.1.4.a. Change language to reflect statute language and meaning to read "If a student with a disability carries a dangerous weapon or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school or a school function under the jurisdiction of a state or local education agency". 7. 1. 5. a. Add language to read "...he or she disagrees with the manifestation determination or with any decision regarding placement. Page 54, 7.1.2. B.c.

Too open ended; language needs added that if there is a change in placement, appropriate evaluations procedures/ needed provided data must be followed. 7.1.7.a. When added on school property or school sponsored activity.

## **126-16-8 Procedural Safeguards**

✓ **126-16-9 Accountability** – Page 86, 9.1.3.d. Sounds as if parent has NO choice; add " for parents who do not object" Page 84, for a state that has a large population of parents from poor educational backgrounds, a signed written complaint is too unreasonable; it might also violate the ADA for certain populations. Page 84, A. Too wordy and difficult for most people to understand.

## ✓ **126-16-10. Glossary Define Expedited Hearing**

**ADDITIONAL:** WVPTI Staff, trainers, parent volunteers, and board members met as a group on June 22, 1999. We've only listed our main concerns. It takes a lot of time and thought to cover all of the policy, which we have done, but we believe that this draft

is probably a "done deal" and our input is for procedures that are required by law, and not to provide a document that would actually benefit the user. Therefore, we did not list all of our comments. We feel that parents and students themselves have been overlooked with the "new" policies, in that they are difficult to understand, difficult to follow, and not at all user friendly. It would be to our state's advantage to develop a best practice by providing Regulations that could actually be used by the majority of the targeted audiences - families and school personnel. Just to have a pretty, uniform format with other state policies, or to have "alignment with the federal statute", doesn't necessarily meet the needs of West Virginia. A perfect example is the first couple sections on the state complaint process. We all agree that the majority of families and school personnel that we have worked with would never get past the first section.

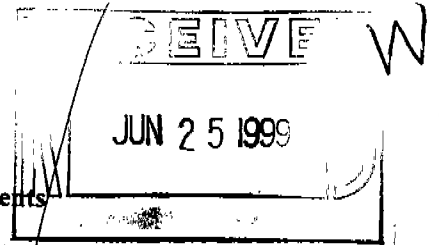
We also feel that parental input has not been valued in the past, nor does it seem to be valued through this process. We agree the procedures have been followed by providing a draft, by setting up public meetings, etc., and that if monitored, the correct documentation would be present. However, we question the quality of the process, and question how many STUDENTS have been explained this process and allowed to provide comments.

WVPTI, under the Freedom of Information Act, requests copies, after names have been removed, of all comments provided on the draft Policy 2419.

**Return comments by June 25, 1999 to:**

**Dr. Dee Bodkin  
Director  
Building 6, Room 304  
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Charleston, WV 25305-0330  
Email: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
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**Cc: WVPTI Staff and Trainers  
WVPTI, Inc. Board  
Dr. Judy Heuman, OSERS**



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: David B. Weckley

Title: Special Education Director Ritchie County Schools

Street Address: 134 South Penn Ave City/State/Zip: Harrisonville WV 26362

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

**§126-16-6. Administration of Services**

*The proposed caseload numbers will not be effective. Using this new system, there are many teachers in my county that will exceed current caseload limits. I would suggest an impact study before putting this in place.*

**§126-16-7. Discipline**

*D. Weckley*

**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

**§126-16-10. Glossary**

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BEIVE W.

JUN 25 1999

**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: David B. Weekley

Title: Special Education Director Ritchie County Schools

Street Address: 134 South Penn Ave City/State/Zip: Harrisville WV 26362

**Comments / Suggestions**

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**§126-16-3. Evaluation and Reevaluation**

**§126-16-4. Eligibility**

**§126-16-5. Individualized Education Program Process**

**§126-16-6. Administration of Services**

*The proposed coreload numbers will not be effective. Using this new system, there are many teachers in my county that will exceed current coreload limits. I would suggest an impact study before putting this in place.*

**§126-16-7. Discipline**

*D. Weasley*

**§126-16-8. Procedural Safeguards**

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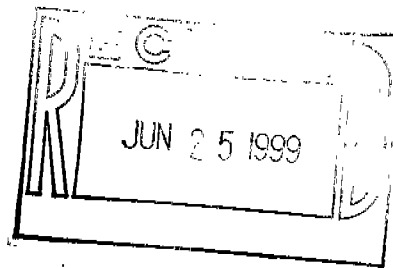
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**Policy 2419: Regulations for the Education of Exceptional Students**

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**Individual/Organization:** Kathryn C. Wilcox / Alderson Elementary School

**Title:** Teacher, Special Education

**Street Address:** Chase Street & Elmwood **City/State/Zip:** Alderson, WV 24910

**Comments / Suggestions**

please see back of page  
§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

**§126-16-6. Administration of Services**

(6.1.5.b.A) " Each public agency shall establish and maintain a  
*page 44* system for overseeing the *collective caseload..."*  
*of each teacher*  
Collective students' needs may not be reflected in aggregating the  
total amount of services required by individual students.

**§126-16-7. Discipline**

**§126-16-8. Procedural Safeguards**

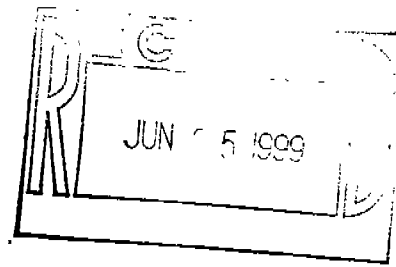
**§126-16-9. Accountability**

**§126-16-10. Glossary**

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Kathryn C. Wilcox / Alderson Elementary School

Title: Teacher, Special Education

Street Address: Chase Street & Elmwood City/State/Zip: Alderson, WV 24910

**Comments / Suggestions**

please see back of page  
§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

**§126-16-6. Administration of Services**

(6.1.5.b.A) " Each public agency shall establish and maintain a  
*page 44* system for overseeing the *collective caseload...*"  
*of each teacher*  
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**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

**§126-16-10. Glossary**

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**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

**§126-16-10. Glossary**

Complete response form by listing each section of the policy.

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FAX: (304) 558-3741

Policy 2419: Regulations for the Education of Exceptional Students

W  
MAY 21 1999

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Marla M. Wightman

Title: Sp. Ed. teacher

Street Address: 600 McKees CK. Rd. City/State/Zip: Summersville, WV  
304-872-3567 26651

Comments / Suggestions

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

adding "ADD/ADHD to "Child with a Disability." I do not believe this should be added as a disability. These students/

§126-16-5. Individualized Education Program Process

people will then be able to get SSI benefits. The government has difficulty meeting the really disabled peoples needs without adding another group.

**§126-16-7. Discipline**

**§126-16-8. Procedural Safeguards**

**§126-16-9. Accountability**

**§126-16-10. Glossary**

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

**Dr. Dee Bodkins**  
**Director**  
**Building 6, Room 304**  
**1900 Kanawha Boulevard East**  
**Charleston WV 25305-0330**  
**e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)**  
**FAX: (304) 558-3741**

W

**From:** kelli whytsell <kwhytsell@wvadventures.net>  
**To:** pcarte@access.k12.wv.us <pcarte@access.k12.wv.us>  
**Date:** Thursday, June 24, 1999 11:58 AM  
**Subject:** Policy 2419: Regulations for the Education of

---

Dear Dee Bodkins, Director, Office of Special Education

I am email you my concerns for the revisions to Policy 2419, I am most concerned about the changes to the Preschool Special needs aspect of 2419. I am a preschool special needs teacher in Calhoun County, my caseload has been 16, 8 per class with a paraprofessional. My classroom is an integrated classroom with norming peers, I have 8 students with IEP's and 4 norming peers in each class with two groups per week, on Friday's we provide home visits to the parents in which we work on behavior management plans, goals and objectives on the student's IEP, and other needs that the parent may have. This not only helps the students and parents it also provides the much needed home school connection at an early age. The more we reinforce this connection the more success we will have in working with that child and the family in the future.

The revision to 2419 will do two things First it will reduce the class size from 16 to maybe 10 our students are served for 720 minutes per week which would reduce the number of students from 16 to 10. The class size of 8 per day worked, it allowed us to serve students provide individual instruction and also interact with peers. Removing the hours per week for service will allow counties to serve students with IEP'S less hours not according to need. The Second is it will remove the requirement of having an aide in the classroom the new language states: Service personnel shall be assigned based upon students' needs( either individually or collectively). If this language stands for the Preschool Special needs program you have in effect eliminated our ability to have a quality preschool program. Counties will remove the aids from our classroom in order to meet state service personnel numbers per county student population. We can't operate a Quality Preschool Classroom with out the aids. The Eligibility for the Preschool program are developmental delays in two or more of the following areas: cognition, fine motor, gross motor, communication, social/emotional/affective development, self-help. We have such a varied needs in our classroom that the aids are necessary, in working with 3-5 year old children the accidents alone would keep one person busy, and if one person is all that the classroom has who is providing instruction.

I submit to you that the revision to policy 2419 in regards to preschool remain as they were. West Virginia was a leader in preschool education by requiring a Preschool Special Needs Certification in most cases a Master degree, you have some of the most highly trained teachers teaching the preschool children in this state, and in looking at new Brain Development research this is the most critical time in a child's life for learning. Please let us keep our high quality programs but the children first.

These are my recommendations:

Caseloads:

Family consultation Assign no more than 15 Children.

Center-Based Program:

1 Regular education:Full time- assign not more than 20 Children;

2 Regular Education Part Time assign no more than 15 children;  
3 Special Education Program; Separate class  
1 Assign no more than eight (8) eligible children per session with an aide for a maximum caseload of sixteen (16).

These numbers worked and allowed the preschool teacher to serve an adequate number of children in a quality preschool program. You must also remember that these same preschool teachers in most rural counties are responsible for, screenings, testing, diagnostic reports, meeting notification, and developing IEP's for the eligible students. This is a lot of paperwork, but our primary focus is on the needs of our preschool students and providing them with a quality education. Your assistance in reviewing this policy revision is appreciated.

Sincerely,

Kelli Whytsell

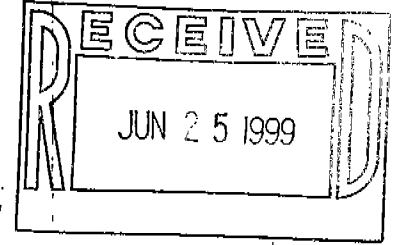
H.C.65 Box 39A

Grantsville, W.V. 26147

(304)354-6965

[kwhytsell@wvadventures.net](mailto:kwhytsell@wvadventures.net) (home)

ACHC Fax - Central Office, 725 Yokum Street, Elkins, WV, 26241



Barbour, Randolph, Tucker, and Upshur Counties

To: Dee Bodkins

From: Appalachian Community Health Center Early Intervention  
Fax: (304) 636-8360  
Phone: (304) 636-7020

Date: 6/24/99

Subject: Policy 2419

Pages: 3, including this

Comments: \_\_\_\_\_  
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Confidentiality Notice!!!!!!!!!!!!

The documents accompanying this facsimile transmission may contain confidential information which is legally privileged. The information is intended only for the use of the individual or the person responsible for delivering it to the intended recipient. You are hereby notified that any disclosure, copying, distribution, or use of any of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone and mail the original transmission to us. Thank you.

W

Policy 2419: Regulations for the Education of Exceptional Students

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Mel Woodcock, Appalachian Comm. Health Center

Title: Early Intervention Coordinator

Street Address: 725 Yohum Street City/State/Zip: Elkins, WV 26241

Comments / Suggestions

§126-16-1. General

Language is more understandable than previous.  
Inclusion is stressed which is so positive. How does a parent obtain a copy of the local public agency's policies? Brochure should include this.

§126-16-2. Identification / Referral

Parents should be on the team that develops public awareness child find activities as well as for all local policy development.

§126-16-3. Evaluation and Reevaluation

Suggestion: Parent permission for reevaluation does not have a timeline. 30 day notification is appropriate. Not one year as happens many times.

§126-16-4. Eligibility

Better clarification has been provided for initiation of preschool services "as of their third birthday" and that a transition process must be initiated prior to the child's third birthday.  
Better clarification of Other Health Impaired has been provided.

§126-16-5. Individualized Education Program Process

Public agency is responsible for assuring certain professionals are in attendance. Develop a brochure for parents to understand who should be involved in IEP process.

§126-16-6. Administration of Services

✓ Caseload 90 are confusing to parents.  
Other Health Impaired is fatigue. Should give examples such as nurse, physician, behavior specialist etc. Don't give the local LEA an out.

§126-16-7. Discipline

✓ Better definition of a Positive Behavioral Support Plan, Functional Behavioral Analysis is needed. Local LEA should provide documentation that professional writing Positive Behavioral Support Plan has training, also functional analysis.

§126-16-8. Procedural Safeguards

✓ pg. 62 - last line b. If a parent chooses an IFSP, obtain written informed consent → This is very unclear.

§126-16-9. Accountability

Need a separate brochure for procedural safeguards  
Add local LEA responsible for offering training to parents annually on Policy 2419.

§126-16-10. Glossary

Put back in resources for families. ✓

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

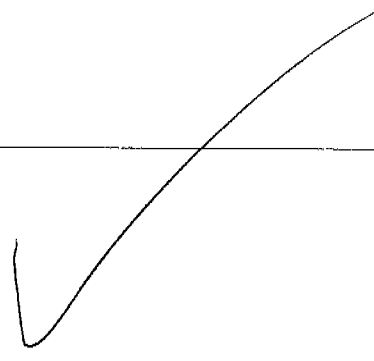
Dr. Dee Bodkins  
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Building 6, Room 304  
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Charleston WV 25305-0330  
e-mail: [pcarte@access.k12.wv.us](mailto:pcarte@access.k12.wv.us)  
FAX: (304) 558-3741

W

**Dee Bodkins**

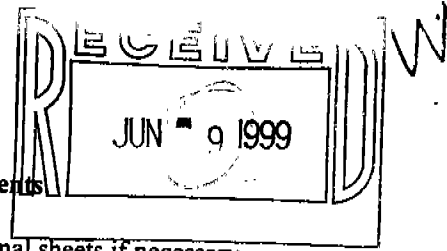
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From: Brenda Termini Wilson <brtwilso@access.k12.wv.us>  
To: dbodkins@access.k12.wv.us  
Subject: comments on policy 2419  
Date: Wednesday, June 23, 1999 11:21 AM



Dear Dr. Bodkins,  
This is a comment regarding the section of policy 2419 entitled, Administration of Services (Section 126-16-6). The new method of determining caseloads will make it necessary for Calhoun County Schools to hire more teachers in order to serve the same students it serves using the old method for determining caseloads. Let me give you two examples. In our preschools, which are combination preschool programs, serving two sets of students, one set on Mondays and Wednesdays and the other on Tuesdays and Thursdays, and making home visits or performing assessments and other professional activities on Fridays. Under the new method of determining caseloads, each teacher would have a weighted caseload of 48, by serving 16 students (8 on Mondays / Wednesdays and 8 on Tuesdays / Thursdays) for a total of 300 minutes per day (600 minutes per week) each. Multiplying 16 times 3 (the rating code for 600 minutes per week) yields 48. Either an exception needs to be made for preschool, or the weighted caseload needs to be increased to 48. In another example, in an elementary school that serves students seven hours per day with seven 45 minute instructional periods and one hour for lunch and recess, a teacher of students with mild disabilities serves students for six of those instructional periods and still has a 45 minute planning period. She does not have recess duties, so she has 5 3/4 hours of instructional time. Assuming 8 students per instructional period, this closely corresponds to a weighted caseload of 48. My strong recommendation is for a weighted caseload of 48 to give school districts flexibility in meeting students needs. However, if that is not possible, it is imperative that an exception to the weighted caseload of 40 be made for combination preschool programs so that they can continue functioning as they have in the past.

Sincerely,  
Brenda Wilson  
Director of Federal Programs  
Calhoun County Schools



**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Jennifer Weekley, Ritchie County

Title: Learning Disabilities Teacher

Street Address: 340 W. High Street City/State/Zip: Harrisville WV 26362

**Comments / Suggestions**

**§126-16-1. General**

✓ 1.65- Students who have been suspended or expelled from school do not deserve to receive a public education which "meets their needs." If they are expelled and still receive benefits such as a home-bound teacher who brings all work to their doorstep - who wouldn't want this? Everyone would love to have an education "at their convenience" & delivered to their home. They can sleep in!

**§126-16-2. Identification / Referral**

✓ I see no problem with this section.

**§126-16-3. Evaluation and Reevaluation**

✓ A gifted student should be re-evaluated as other students are. A "gifted" student with an IQ of 136 + performance & achievement scores of 89 desperately needs to have those needs addressed. Many times a student tested for gifted at a young age qualifies quite easily, but in time, does not exhibit these behaviors.

**§126-16-4. Eligibility**

✓ The parent should definitely be involved in the IEP process, but does not need to be on the Eligibility Committee. If an LD team report must be done, please assure it is easily understood and not such a repetitive form.

**§126-16-5. Individualized Education Program Process**

✓ Section D- This section, which includes a double negative, should be reworded so it is not confusing, (IE. a statement to which the student will be able to participate with non-exceptional peers).

**§126-16-6. Administration of Services.** - With the rating system you are proposing, the job I do would take at least 2 professional staff. This will significantly decrease, in most cases the # of children we will be able to serve. As for there being no mandate for aides in the classroom, some teachers will be overwhelmed with many children to instruct without the assistance of an aide. This proposal will definitely have a negative impact on our children.

It's about time we are able to be able to discipline children accordingly.

**§126-16-8. Procedural Safeguards**

This area looks fine

**§126-16-9. Accountability**

This area looks fine.

**§126-16-10. Glossary**

Ok.

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

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Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
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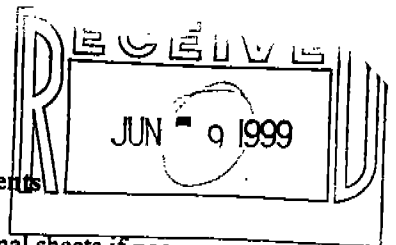
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Policy 2419: Regulations for the Education of Exceptional Students



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FAX: (304) 558-3741

GOOD EVENING -

I AM ROSEMARY JENKINS - STAFF REPRESENTATIVE  
FOR THE WEST VIRGINIA FEDERATION OF TEACHERS.

I THANK YOU FOR THE OPPORTUNITY TO SPEAK  
TONIGHT ON THE PROPOSED POLICY REVISIONS TO  
POLICY 2419.

THE WVFT HAS A GREAT CONCERN ABOUT THE  
LACK OF TIME PROVIDED FOR INPUT TO SUCH MAJOR  
REVISIONS. ADDITIONALLY, THE COMMENT PERIOD  
COMES AT A TIME WHEN TEACHERS ARE AWAY FROM  
THEIR SCHOOLS; CONSEQUENTLY, OUT OF TOUCH  
WITH COUNTY AND STATE COMMUNICATIONS.  
ACCORDING TO A CORRESPONDENCE FROM THE  
OFFICE OF SPECIAL EDUCATION, COPIES OF THE  
PROPOSED POLICY 2419 WERE MAILED ON MAY 17<sup>TH</sup> TO

THE FACULTY SENATE CHAIRS AT EACH SCHOOL IN THE STATE.

WVFT DID RANDOM CALLING TO FACULTY SENATE CHAIRS IN SEVERAL DIFFERENT COUNTIES AND COULD NOT FIND ONE FACULTY SENATE CHAIR THAT WAS AWARE OF THE POLICY CHANGES, MUCH LESS FIND ONE PERSON THAT RECEIVED A COPY OF THE POLICY. WVFT RECEIVED A COPY OF THE DOCUMENT ON MAY 26, 1999. EQUALLY DISTURBING IS THAT ON JUNE 25<sup>TH</sup>, LESS THAN 60 DAYS, ENDS THE PUBLIC COMMENT PERIOD.

THE WVFT UNDERSTANDS THE DEPARTMENT'S NEED TO HAVE SOME REVISIONS IN PLACE WITH THE COMING SCHOOL YEAR AS A RESULT OF THE REVISED REQUIREMENTS IN IDEA 97. ON THE OTHER HAND, WE

ARE BAFFLED AS TO WHY THE DEPARTMENT IS ALLOWING SO LITTLE TIME FOR INPUT, PARTICULARLY THE SECTION CONCERNING CASELOADS, AS THIS SECTION WILL NOT BECOME EFFECTIVE UNTIL JULY 1, 2000.

WVFT OBJECTS TO THE PROPOSED CHANGE TO THE ASSIGNMENT OF SERVICE PERSONNEL, BASED UPON STUDENTS' NEEDS RATHER THAN USING THE CURRENT FORMULA. UNDER THE NEW PROPOSAL, CLASSROOM AIDES WILL BECOME VIRTUALLY NON-EXISTENT.

THE CURRENT POLICY MANDATES THAT A SPECIAL EDUCATION AIDE BE REQUIRED AFTER A SPECIFIC NUMBER OF STUDENTS ARE BEING SERVED IN A SPECIAL EDUCATION CLASSROOM, FOR EXAMPLE AN

AIDE IS REQUIRED IN A BEHAVIOR DISORDER CLASS IF THERE ARE MORE THAN FOUR STUDENTS DURING ANY INSTRUCTIONAL PERIOD. THE NEW POLICY HAS REMOVED THIS REQUIREMENT. CURRENTLY, THE CASELOAD DURING ANY ONE INSTRUCTIONAL PERIOD FOR A TEACHER PROVIDING SERVICES TO STUDENTS THAT ARE CLASSIFIED REGULAR EDUCATION, PART-TIME SHALL NOT EXCEED EIGHT STUDENTS AT EARLY CHILDHOOD OR TEN STUDENTS AT MIDDLE AND ADOLESCENT EDUCATION. ACCORDING TO THE NEW PROVISIONS, THIS REQUIREMENT WILL BE ELIMINATED CAUSING A POTENTIAL FOR LARGER CLASS SIZES.

THE WVFT IS RECOMMENDING THAT THE POLICY BE APPROVED -- WITH THE EXCEPTION OF THE PROPOSED CHANGES CONCERNING CASELOADS IN

*SECTION 126-16-6 - ADMINISTRATION OF SERVICE*

BEGINNING ON PAGE 44. WE ARE ASKING TO DELAY THIS SECTION UNTIL AFTER THE SCHOOL YEAR STARTS TO GIVE THE TEACHERS ADEQUATE TIME TO REVIEW AND COMMENT. THANK YOU FOR YOUR CONSIDERATION.

GOOD EVENING -

-1-

I AM PERRY WEST - STAFF

REPRESENTATIVE FOR THE WEST VIRGINIA  
FEDERATION OF TEACHERS.

I THANK YOU FOR THE OPPORTUNITY  
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**-3-**

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**-4-**

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**-5-**

*SECTION 126-16-6 - ADMINISTRATION OF  
SERVICE* BEGINNING ON PAGE 44. WE ARE  
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COMMENT. THANK YOU FOR YOUR  
CONSIDERATION.

POLICY 2419 PUBLIC HEARING  
JUNE 1999

REGISTRATION FORM

Name/Title

I Wish to Provide Oral Comments

Yes

No

	Yes	No
Beth King		✓
Mary Beth Dicks		✓
Mae West		✓
Beverly Griffith	✓	



GOOD EVENING -

-1-

I AM JOHN O'NEAL - STAFF REPRESENTATIVE FOR THE WEST VIRGINIA FEDERATION OF TEACHERS.

I THANK YOU FOR THE OPPORTUNITY TO SPEAK TONIGHT ON THE PROPOSED POLICY REVISIONS TO POLICY 2419.

THE WVFT HAS A GREAT CONCERN ABOUT THE LACK OF TIME PROVIDED FOR INPUT TO SUCH MAJOR REVISIONS. ADDITIONALLY, THE COMMENT PERIOD COMES AT A TIME WHEN TEACHERS ARE AWAY FROM THEIR SCHOOLS; CONSEQUENTLY, OUT OF TOUCH WITH COUNTY AND STATE COMMUNICATIONS. ACCORDING TO A CORRESPONDENCE FROM THE OFFICE OF SPECIAL EDUCATION, COPIES OF THE PROPOSED POLICY 2419 WERE MAILED ON MAY 17<sup>TH</sup> TO

THE FACULTY SENATE CHAIRS AT EACH SCHOOL IN THE STATE.

WVFT DID RANDOM CALLING TO FACULTY SENATE CHAIRS IN SEVERAL DIFFERENT COUNTIES AND COULD NOT FIND ONE FACULTY SENATE CHAIR THAT WAS AWARE OF THE POLICY CHANGES, MUCH LESS FIND ONE PERSON THAT RECEIVED A COPY OF THE POLICY. WVFT RECEIVED A COPY OF THE DOCUMENT ON MAY 26, 1999. EQUALLY DISTURBING IS THAT ON JUNE 25<sup>TH</sup>, LESS THAN 60 DAYS, ENDS THE PUBLIC COMMENT PERIOD.

THE WVFT UNDERSTANDS THE DEPARTMENT'S NEED TO HAVE SOME REVISIONS IN PLACE WITH THE COMING SCHOOL YEAR AS A RESULT OF THE REVISED REQUIREMENTS IN IDEA 97. ON THE OTHER HAND, WE

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WVFT OBJECTS TO THE PROPOSED CHANGE TO THE ASSIGNMENT OF SERVICE PERSONNEL, BASED UPON STUDENTS' NEEDS RATHER THAN USING THE CURRENT FORMULA. UNDER THE NEW PROPOSAL, CLASSROOM AIDES WILL BECOME VIRTUALLY NON-EXISTENT.

THE CURRENT POLICY MANDATES THAT A SPECIAL EDUCATION AIDE BE REQUIRED AFTER A SPECIFIC NUMBER OF STUDENTS ARE BEING SERVED IN A SPECIAL EDUCATION CLASSROOM, FOR EXAMPLE AN

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GOOD EVENING -

-1-

I AM BERNIE HURST - PRESIDENT OF THE HARRISON COUNTY FEDERATION OF TEACHERS.

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**Policy 2419: Regulations for the Education of Exceptional Students**

Please use this form when commenting on proposed Policy 2419. You may attach additional sheets if necessary.

Individual/Organization: Bernie Hurst

Title: President HARRISON CO. Fed. OF TEACHERS WUFT/AFT/AFI-LIO

Street Address: RT. 1 BOX 284-A City/State/Zip: LOST CREEK, WU 26385

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

**Policy 2419: Regulations for the Education of Exceptional Students**

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Individual/Organization: Bernie Hurst

Title: President HARRISON CO. Fed. OF TEACHERS WUFT/AFT/AFI-CIO

Street Address: Rt. 1 Box 284-A City/State/Zip: Lost Creek, WU 26385

**Comments / Suggestions**

§126-16-1. General

§126-16-2. Identification / Referral

§126-16-3. Evaluation and Reevaluation

§126-16-4. Eligibility

§126-16-5. Individualized Education Program Process

§126-16-6. Administration of Services

DELAY THIS SECTION UNTIL AFTER THE SCHOOL YEAR STARTS TO GIVE TEACHERS ADEQUATE TIME TO REVIEW AND COMMENT.

① FEW FACULTY SENATE CHAIRS, IF ANY KNEW ABOUT THIS POLICY CHANGE.

§126-16-7. Discipline

§126-16-8. Procedural Safeguards

§126-16-9. Accountability

§126-16-10. Glossary

Complete response form by listing each section of the policy.

Return comments by June 25, 1999 to:

Dr. Dee Bodkins  
Director  
Building 6, Room 304  
1900 Kanawha Boulevard East  
Charleston WV 25305-0330  
e-mail: pcarte@access.k12.wv.us  
FAX: (304) 558-3741

GOOD EVENING -

-1-

I AM KENNY STULTZ - PRESIDENT OF THE WAYNE COUNTY FEDERATION OF TEACHERS.

I THANK YOU FOR THE OPPORTUNITY TO SPEAK TONIGHT ON THE PROPOSED POLICY REVISIONS TO POLICY 2419.

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